

TRIBAL PROSPERITY AND SELF- DETERMINATION THROUGH ENERGY DEVELOPMENT

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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CONTENTS

	Page
Hearing held on Tuesday, October 4, 2016	1
Statement of Members:	
Bishop, Hon. Rob, a Representative in Congress from the State of Utah ...	1
Prepared statement of	3
Westerman, Hon. Bruce, a Representative in Congress from the State of Arkansas	3
Statement of Witnesses:	
Denetsosie, Louis, President and CEO, Navajo Nation Oil and Gas Company, Window Rock, Arizona	20
Prepared statement of	21
Ferguson, Hon. Jack, Confederated Tribes of the Colville Reservation, Representative, Intertribal Timber Council, Nespelem, Washington	11
Prepared statement of	13
Glenn, Richard, Executive Vice President, Lands and Natural Resources, Arctic Slope Regional Corporation, Barrow, Alaska	15
Prepared statement of	17
Henson, Eric, Senior Vice President, Compass Lexecon, Research Affiliate, Harvard Project on American Indian Economic Development, Tucson, Arizona	23
Prepared statement of	25
Olguin, Hon. James M. "Mike", Tribal Council Member, Southern Ute Indian Tribe, Ignacio, Colorado	5
Prepared statement of	7

OVERSIGHT FIELD HEARING ON TRIBAL PROSPERITY AND SELF-DETERMINATION THROUGH ENERGY DEVELOPMENT

**Tuesday, October 4, 2016
U.S. House of Representatives
Committee on Natural Resources
Santa Fe, New Mexico**

The committee met, pursuant to call, at 10:00 a.m., at 490 Old Santa Fe Trail, Santa Fe, New Mexico, Hon. Rob Bishop [Chairman of the Committee] presiding.

Present: Representatives Bishop and Westerman.

The CHAIRMAN. Hi. Thank you all for being here. I appreciate you coming and joining us in this official committee hearing today.

I actually had to wait until it was after 10:00 just because of tradition, but you should know, by my time, we are still 8 minutes early. So, it may be after 10:00, but this is my time.

The committee is meeting today to hear testimony on the following topic: "Tribal Prosperity and Self-Determination through Energy Development." Under Committee Rule 4(f), oral opening statements at the hearing are limited to the Chairman, Ranking Member, and any other Member who happens to be here, so we will all get a chance to say something.

I ask unanimous consent that all Members' opening statements be made a part of the hearing record if they are submitted to the Clerk by 5:00 p.m. or if they say them here in the actual meeting. And hearing no objection, that is so ordered.

So, let me begin with my opening statement, if I could.

STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

The CHAIRMAN. I first want to thank the Legislature of New Mexico for their kindness and cooperation in allowing us to use this facility. I understand this is the Natural Resources Committee room for New Mexico, in which case, this is the appropriate place for us to be. So, thank you for allowing us to borrow your facilities for this hearing, and particularly when this is a busy time.

We are gathered here to review what I think is an important topic. It is an issue at its core that deals with human dignity, self-determination, and opportunity. These concepts underlie the relationship between government and people, and this particular relationship is a little bit different because tribes and the Federal Government are both sovereigns. A failure to understand this fundamental difference on the part of the Federal agencies is one of the reasons why I think we are here today.

Increasingly, the Federal Government treated tribal lands like they are Federal lands. Rather than working with tribes to promote self-governance, Federal agencies have imposed a cumbersome web of blanket mandates and policies where consultation is merely an

afterthought, not the first step in the process. In many cases, this is taking place despite policy from Congress to devolve control over trust lands to the rightful Indian owners.

For Native communities, the decision to develop their energy resources can provide a multitude of economic, educational, and infrastructural benefits. Some tribes have stated that revenues from energy development fund up to 90 percent of their government operations.

Unfortunately, nearly every aspect of energy development on tribal lands is influenced or controlled by the Federal Government, a policy stemming from some old notions that some people cannot manage their own resources, which is totally inaccurate.

Many of the laws and regulations that apply to Indian Country are complex and cumbersome, increasing development costs and causing delays and uncertainty to the development of resources on tribal land.

When a tribe wants to lease its trust lands to drill an oil well, that lease is not valid until it is approved, if it is ever approved, by the Interior Department, which imposes an array of regulatory obstacles and investor uncertainty.

Further, if any tribe wishes to enter into an agreement with a private company, the parties must go through an onerous 49-step process which involves more than 15 Federal agencies and offices and unelected bureaucrats to acquire a permit for an energy development project.

As many tribal representatives have testified before Congress, it is not uncommon for several years to pass before any determination is made by Interior on whether energy development projects may move forward. This often leads to less development on Indian lands than on adjacent Federal property, and definitely less than on private property.

Many tribes, rich in land and natural resources, suffer unemployment rates up to 50 percent or higher. They live in some of the most impoverished conditions known in America today. The bipartisan Federal policy of promoting tribal self-determination launched by President Nixon in 1970 cannot be fully realized as long as there are paternalistic Federal laws and policies that remain on the books or, as we have seen, Federal agencies that act beyond what I think is their proper authority.

Today's hearing is intended to let a number of Native leaders, as well as an economist, tell us about the impacts of energy development on tribal lands. This is a source of legislation that the House has passed, and the Senate passed. I would like to see it passed in both bodies of the Congress so we can move forward in this particular area, but I would also like to see us change the overall policy, so that our goal is actually to develop the resources that are here, so that tribal areas have the same benefit of those resources that private and state lands currently have.

I want this to be both a positive sketch of how tribes are managing their resources for the benefit of their communities, and a critical analysis of what more needs to be done with the Federal obstacles that stand in the way of that development.

[The prepared statement of Mr. Bishop follows:]

PREPARED STATEMENT OF THE HON. ROB BISHOP, CHAIRMAN, COMMITTEE ON
NATURAL RESOURCES

I first want to thank the Legislature of New Mexico for their kindness and cooperation in allowing this committee to borrow their State Capitol facilities for this hearing, particularly during a busy time for them.

We have gathered here to review an important topic. The issue at its core deals with human dignity, self-determination and opportunity. These concepts underlie the relationship between government and people. In this particular relationship, it's different.

Why? The relationship between tribes and the Federal Government is between sovereigns. A failure to understand this fundamental difference on the part of Federal agencies is one reason why we are here today.

Increasingly, the Federal Government has treated tribal lands like they are Federal. Rather than work with tribes to promote self-governance, Federal agencies have imposed a cumbersome web of blanket mandates and policies where consultation is a mere afterthought. In many cases, this is taking place despite congressional policy to devolve control over trust lands to their Indian owners.

For Native communities, the decision to develop their energy resources can provide a multitude of economic, educational, infrastructural benefits. Some tribes have stated that revenues from energy development fund up to 90 percent of their government operations.

Unfortunately, nearly every aspect of energy development on tribal lands is influenced or controlled by the Federal Government, a policy stemming from old notions that Natives are incapable of or unwilling to manage their resources. Many of the laws and regulations that apply to Indian Country are complex and cumbersome, increasing development costs and causing delays and uncertainty to the development of energy resources on tribal land.

When a tribe wants to lease its trust lands to drill an oil well, the lease is not valid until it is approved—if it is approved—by the Interior Department, which imposes an array of regulatory obstacles and investor uncertainty.

Further, if any tribe wishes to enter into agreements with a private company, the parties must go through an onerous 49-step process which involves more than 15 Federal agencies and offices—unelected bureaucrats, to acquire a permit for energy development projects.

Many tribal representatives have testified before Congress that it is not uncommon for several years to pass before any determination is made by the Interior on whether energy development project may be able to move forward. This often leads to less development on Indian lands than adjacent Federal and private lands.

Many tribes rich in land and natural resources suffer unemployment rates of 50 percent and higher and live in the most impoverished conditions known in America today. The bipartisan Federal policy of promoting tribal self-determination launched in President Nixon's 1970 "Special Message on Indian Affairs" cannot be fully realized as long as paternalistic Federal laws and policies remain on the books, or, as we've seen, Federal agencies act beyond their authorities.

Today's hearing is intended to let a number of Native leaders, as well as an economist, tell us about the impacts of energy development on Indian lands. I want this to be both a positive discussion about how tribes are managing resources for the benefit of their communities, and a critical analysis of what more needs to be done with the Federal obstacles that stand in their way.

The CHAIRMAN. I appreciate everyone being here. I look forward to the testimony.

I will yield to Mr. Westerman if he wants to say a few words in opening.

**STATEMENT OF THE HON. BRUCE WESTERMAN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
ARKANSAS**

Mr. WESTERMAN. Thank you, Mr. Chairman. I would also like to thank the state of New Mexico and the New Mexico legislature for hosting us today, and I would like to thank Chairman Bishop for his work in getting out in these field hearings across the country.

I know he spends a lot of time doing that, and it is an honor to be here with him today.

Like Chairman Bishop, I served in my state legislature in Arkansas. But before I did that, the first elected office I held was on the school board. I was just discussing earlier with someone about how I firmly believe that government is most effective when it is closest to the people, and those decisions that are made locally have a big impact on local communities. The further away the government gets from the decisions that are being made, the more overbearing, unrealistic, and unattainable are the goals that need to be accomplished.

When I ran for Congress—and I am in my first term—my campaign slogan was “less hassle, more freedom,” and it was about this very kind of issue where Americans want to live their lives with less hassle from the Federal Government, and they want to have more freedom to raise their families, to create jobs, to grow communities, and sometimes we get in the way of that in the Federal Government, which I think is the classic example of what is happening here with over-reach.

When we look at poverty, the number-one anti-poverty program has always been a job, and it is the local entities, it is the tribes, it is the businesses that create jobs. But when they are working in an environment where they cannot create jobs, that hurts everyday people who are just trying to make a living and raise their families.

So, I hope that we can move forward here and put the decision-making where it belongs, and that is in the hands of the tribes and the local community.

With that, I yield back, Mr. Chairman.

The CHAIRMAN. Thank you. I appreciate that, and thank you for joining us here, Mr. Westerman, and coming from Arkansas to do it.

I want to thank the witnesses who are going to be here to provide testimony, both orally as well as for the record. Let me introduce them to you all at the beginning.

First, the Honorable James M. Olguin, who is a Tribal Council Member from the Southern Ute Tribe. Thank you for being with us again.

The Honorable Jack Ferguson, Confederated Tribes of the Colville Reservation. He is also a representative on the Intertribal Timber Council. Appreciate you being here.

Mr. Richard Glenn, who is the Executive Vice President, Lands and Natural Resources for the Arctic Slope Regional Corporation. Thank you for coming from Alaska to be down here.

Mr. Louis Denetsoie. Did I come close to that? I didn't come close at all, did I?

[Laughter.]

The CHAIRMAN. But anyway, he is a significant player in this issue as the President and CEO of the Navajo Nation Oil and Gas Company. So, I thank you even though I slaughtered your name. I thank you for being here to give your testimony.

And Mr. Eric Henson, who is a Senior Vice President for Compass Lexecon and a Research Affiliate for the Harvard Project on American Indian Economic Development.

For the five of you, thank you for being here.

Many of you have testified before. This is still a congressional hearing, so we will run it under the rules of a congressional hearing. Anything that you have to add as far as written testimony will obviously be part of the record. Oral testimony should be limited to 5 minutes.

This is a smaller gathering. We don't have that many people here. Usually, I am a stickler with that and I try to cut you off when the 5 minutes ends. I am not going to do that this time, unless you go way beyond that. We can be a little bit more generous as far as the timing because I do appreciate you taking the time to be here.

But we have the lights in front of you for you to utilize. When the red light lights, it is trouble time.

With that, I am going to recognize Mr. Olguin first to give oral testimony that will be in addition to your written testimony. And once again, I am so grateful for you being down here. I appreciate it very much.

Mr. Olguin.

STATEMENT OF THE HON. JAMES M. "MIKE" OLGUIN, TRIBAL COUNCIL MEMBER, SOUTHERN UTE INDIAN TRIBE, IGNACIO, COLORADO

Mr. OLGUIN. Thank you. Good morning, Chairman Bishop and distinguished members of the committee. My name is Mike Olguin, and I am the treasurer and a member of the Southern Ute Indian Tribal Council. It is my great honor to appear before you today on behalf of the Southern Ute Indian Tribe. Our reservation is located several hours from here in southwestern Colorado.

As the premiere natural gas producer in the United States, the Southern Ute Indian Tribe is a great example of the positive impacts of Indian energy development. We became involved in oil and gas development on our reservation in the 1940s, and we have increased our participation in the development process, doing aggressive effort to assume control over our mineral resources.

In 1982, we enacted a severance tax by which we have collected \$800 million over the last three decades. In 1992, the tribe started Red Willow Production Company, which operates wells on the reservation. In 1994, the tribe partnered to create Red Cedar Gathering Company, which provides gathering and training services throughout the reservation.

Less than 50 years ago, the Tribal Council had to suspend the practice of distributing per-capita payments to tribal members because the tribe could not afford them. Today, the tribe conducts sizable oil and gas activity in 10 states and is the largest employer in the Four Corners region. Today, the tribe provides health insurance for its tribal members and promises all members a college education.

The tribe is the only tribe in the Nation with a Triple-A-plus credit rating from Standard and Poor's. Approximately 30 percent of the tribe's income comes from energy development on the reservation. There is no question that energy resource development has put the tribe, our members, and the surrounding community on a more stable economic footing.

We can tell you firsthand that Federal oversight often impedes tribal self-determination. Despite decades of success in managing our own affairs and conducting highly complex business transactions on and off the reservation, the tribe remains subject to Federal regulations that require Federal review and approval of even the most basic transactions. This causes delays and subverts tribal economic development.

For example, the BLM issues building permits on tribal lands, which takes 4 to 6 months. The state of Colorado issues building permits on private lands, which typically takes 45 days. Building permits on tribal lands cost \$9,500, while building permits on private lands are free. Operators obviously prepare to drill on private lands, and, unfortunately for Southern Ute, our reservation is a combination of tribal and private lands.

We are here to tell you that willing and able tribes should be allowed greater authority over energy development on tribal lands. The tribe has consistently demonstrated that it can complete major projects more quickly and effectively than Federal agencies can. Yet, the same agencies often hinder or flat-out refuse the tribe's efforts to assist in carrying out their functions.

For example, after a 2014 Office of Trust review and audit report revealed massive mishandling by the BIA of the tribe's historical records at the Southern Ute Agency, the tribe made countless offers to assist the BIA in solving the problem. Months after the problem was revealed, the BIA finally entered into a 638 contract authorizing the tribe to scan and organize the files at the agency. Interior provided \$250,000 to fund the contract, while the tribe contributed more than a million dollars of its own money and its tribal staff to complete the scanning project.

As another example, the tribe has a streamlined process of approving in a single transaction renewals of all rights-of-way that an operator has on the reservation, usually numbering in the hundreds. This allows the tribe to easily monitor expiration dates and negotiate renewals. When the tribe presented one of these rights-of-way packages to the Southern Ute Agency for approval, it took the agency approximately 4 years to approve the package because there was no way to enter the rights-of-way into the Department's Trust Asset and County Management System, or TAMS.

To overcome this inadequacy of the BIA realty function, the tribe created its own GIS system known as the Land Information Management System. This system allows the tribe to scan realty records into its database, where each document has a location on the map, a function that TAMS lacks.

It is perfectly clear that the BIA does not have the data, resources, technological capabilities, or staffing to meet the needs of the tribe. Meanwhile, the tribe has the capability and, most importantly, the incentive to improve the situation.

In conclusion, like other energy tribes, the Southern Ute Indian Tribe's economic prosperity is due in large part to responsible energy development. The Southern Ute Indian Tribe, like many other tribes, is well-equipped to responsibly develop its own energy resources to achieve ever-increasing self-determination. The tribe respectfully suggests that in some instances the best way for the

United States to uphold its trust responsibility would be to step aside.

The tribe appreciates the efforts of this committee and others to encourage tribal self-determination through economic and energy development. Thank you for this opportunity to appear before you today, and I would be happy to answer any questions.

[The prepared statement of Mr. Olguin follows:]

PREPARED STATEMENT OF THE HONORABLE JAMES M. "MIKE" OLGUIN, TREASURER,
SOUTHERN UTE INDIAN TRIBAL COUNCIL ON BEHALF OF THE SOUTHERN
UTE INDIAN TRIBE

INTRODUCTION

Chairman Bishop and distinguished members of the committee, my name is Mike Olguin and I am the Treasurer and a Member of the Southern Ute Indian Tribal Council. Appearing before you today on behalf of the Southern Ute Indian Tribe is a great honor.

The Southern Ute Indian Reservation consists of approximately 700,000 acres of land located in southwestern Colorado, approximately 311,000 acres of which is held in trust by the Federal Government for the benefit of the Tribe. As a result of the complex history of the Reservation, the Tribe also owns severed oil and gas minerals and coal estates on additional portions of the Reservation that are held in trust by the United States. The Tribe, which is comprised of just over 1,500 members, is a leader in Indian Country with a demonstrated and sterling record of foresight and business acumen. The Tribe is the only tribe in the Nation with an AAA+ credit rating, which was earned through years of steady governance and successful and prudent business transactions. Though the Tribe has a diversified portfolio, energy development remains a key component of the Tribe's strategy. Approximately 30 percent of the Tribe's income comes from energy development on the Reservation. Accordingly, we are well positioned to speak to the relationship between energy development, prosperity, and tribal self-determination.

CAREFUL PLANNING LED THE SOUTHERN UTE INDIAN TRIBE TO BECOME THE PREMIER INDIAN TRIBAL NATURAL GAS PRODUCER IN THE UNITED STATES

The Southern Ute Indian Tribe is a great example of the positive impacts of Indian energy development. Our Reservation is part of the San Juan Basin, which has been a prolific source of oil and natural gas production since the 1940s. Beginning in 1949, the Tribe began issuing leases under the supervision of the Secretary of the Interior. For several decades, we remained the recipients of modest royalty revenue, but were not engaged in any comprehensive resource management planning. That changed in the 1970s as we and other energy resource tribes in the West recognized the potential importance of monitoring oil and gas companies for lease compliance and keeping a watchful eye on the Federal agencies charged with managing our resources. In 1974, the Tribal Council placed a moratorium on oil and gas development on the Reservation until the Tribe could gain better understanding and control over the process. That moratorium remained in place for 10 years while the Tribe compiled information and evaluated the quality and extent of its mineral resources.

A series of events in the 1980s laid the groundwork for our subsequent success in energy development. In 1980, the Tribal Council established an in-house Energy Department, which spent several years gathering historical information about our energy resources and lease records. In 1982, following the Supreme Court's decision in *Merrion v. Jicarilla Apache Tribe*, the Tribal Council enacted a severance tax, which has produced more than \$800 million in revenue over the last three decades. After Congress passed the Indian Mineral Development Act of 1982, we carefully negotiated mineral development agreements with oil and gas companies involving unleased lands, and insisted upon flexible provisions that vested the Tribe with business options and greater involvement in resource development. Because the Tribe's leaders believed that the Tribe could do a better job of monitoring its own resources than Federal agencies, shortly after passage of the Federal Oil and Gas Royalty Management Act of 1982, the Tribe entered into a cooperative agreement with the Minerals Management Service permitting the Tribe to conduct its own royalty accounting and auditing.

In 1992, we started our own gas operating company, Red Willow Production Company, which was initially capitalized through a Secretariially approved plan for

use of \$8 million of tribal trust funds received by our tribe in settlement of reserved water right claims. Through conservative acquisition of on-Reservation leasehold interests, we began operating our own wells and received working interest income as well as royalty and severance tax revenue. In 1994, we participated with a partner to purchase one of the main pipeline gathering companies on the Reservation. Today, the Tribe is the majority owner of Red Cedar Gathering Company, which provides gathering, processing, and treating services throughout the Reservation. Ownership of Red Cedar Gathering Company allowed us to put the infrastructure in place to further develop and market coal bed methane gas from Reservation lands and provided an additional source of revenue. Our tribal leaders recognized that the peak level of on-Reservation gas development would be reached in approximately 2005, and in order to continue our economic growth, we expanded operations off the Reservation.

These acts of energy development through self-determination are key to the Tribe's economic success. Today the Southern Ute Indian Tribe, through its subsidiary energy companies, conducts sizable oil and gas activities in approximately 10 states and in the Gulf of Mexico. Today we are the largest employer in the Four Corners Region. Energy resource development has unquestionably had a great positive impact on the Tribe, our members, and the surrounding community. The regional community college even has a new associate degree program in Tribal Energy Management, and because of the Tribe's vast experience in this realm, the college has enlisted the Tribe's assistance and input.

INDIAN ENERGY DEVELOPMENT HAS AN ENORMOUS IMPACT ON THE ECONOMIC PROSPERITY OF TRIBES AND THE LIVELIHOOD OF INDIVIDUAL TRIBAL MEMBERS

Less than 50 years ago the Tribal Council had to suspend the practice of distributing per capita payments to tribal members because the Tribe could not afford them. Today the Tribe provides health insurance for its tribal members, promises all members a college education, and has a campus dotted with state-of-the-art buildings. This success was not an accident. Without a prolonged effort to take control of its natural resources, the Southern Ute Indian Tribe would not be the economic powerhouse that it is today. Our energy-related economic successes have resulted in a higher standard of living for our tribal members. Our members have jobs. Our educational programs provide meaningful opportunities at all levels. Our elders have stable retirement benefits. We have exceeded many of our financial goals, and we are well on the way to providing our grandchildren and their grandchildren the opportunity to maintain our Tribe and its lands in perpetuity.

Along the way, we have encountered and overcome numerous obstacles, some of which are institutional in nature. We have also collaborated with Congress over the decades in an effort to make the path easier for other tribes to take full advantage of the economic promise afforded by tribal energy resources. As we have stated repeatedly to anyone who will listen to us, "We are the best protectors of our own resources and the best stewards of our own destiny; provided that we have the tools to use what is ours." Successful energy development, in spite of institutional obstacles, has also enabled the Tribe to invest in diverse, non-energy projects, laying the foundation for long-lasting economic prosperity. For example, the Tribe has made real estate investments in 11 markets located in 8 states. These investments include residential, commercial, industrial, and hotel properties throughout California, Nevada, Colorado, Texas, Kansas, Illinois, Ohio, and Maryland. Return on these investments has spurred further economic growth for the Tribe, which would not have been possible but for the Tribe's active efforts to control and develop its energy resources.

FEDERAL OVERSIGHT OFTEN IMPEDES TRIBAL SELF-DETERMINATION

The Tribe has achieved its stature despite the Federal Government's stifling role in Indian energy development. We have been carrying this same message to Capitol Hill since at least 2002. A memorandum from our legal counsel to the Senate Committee on Indian Affairs' legal counsel dated June 30, 2002 states:

The problems with Secretarial approval of tribal business activities include an absence of available expertise within the agency to be helpful . . . Some structural alternative is needed. The alternative should be an optional mechanism that allows tribes to elect to escape the bureaucracy for mineral development purposes, provided the Secretary has a reasonable indication that an electing tribe will act prudently once cut free.

More than a decade later, the Tribe's long-standing concerns were supported by the findings of a 2015 GAO Report that weaknesses in the Bureau of Indian Affairs' (BIA) management of oil and gas resources contributed to a general preference by industry to acquire oil and gas leases on non-Indian lands over Indian lands. This conclusion comes as no surprise to the Tribe, which is all too aware of this reality. For example, the state of Colorado, which issues drilling permits on fee lands, typically issues a permit in approximately 45 days. If the permit is not issued within 75 days, the operator has a right to a hearing. In comparison, on tribal lands, BLM issues the permits to drill, which typically take 4 to 6 months. There are no regulatory commitments to a processing time frame; operators must simply wait. In addition, permitting costs are much higher on tribal lands than on fee lands. The BLM's drilling permit fee is \$9,500, and none of that money goes to the Tribe. In comparison, a state drilling permit in Colorado is free. These disparities create a problem that is exacerbated on reservations like the Southern Ute Indian Reservation, where tribal land and non-Indian fee land are arranged like a checkerboard, and oil or gas operators can develop on non-Indian fee land for less time and money, all-the-while depleting Indian minerals.

Despite the Tribe's decades-long success in managing its own affairs and conducting highly complex business transactions, both on and off of the Reservation, Federal law and regulations still require Federal review and approval of even the most basic realty transaction occurring on the lands held in trust for the Tribe on the Reservation. Federal involvement invariably delays a proposed tribal project. These delays are exacerbated by the fact that a Federal approval often constitutes a Federal action, which triggers environmental and other review requirements, even for simple and straightforward realty transactions. In essence, the Tribe's own lands are treated as public lands, and, if Federal approval is involved, no action—not even some initiated by the Tribe itself—can occur until the Federal Government has analyzed the potential impacts. In order to eliminate these delays and in recognition of the Tribe's ability to protect its own interests and assets without assistance from Federal agencies, the statutory and regulatory requirements for Federal approval of tribal transactions must be modified so that Federal review and approval of realty-related tribal projects is not required.

The Energy Policy Act of 2005 offered a new and creative alternative to this situation in the form of "Tribal Energy Resource Agreements" (TERAs), which are essentially bi-lateral agreements between an electing tribe and the Secretary of the Interior that would govern energy resource development on Indian lands. Under an approved TERA, a tribe would have the authority to negotiate and enter leases, business agreements, rights-of-way and other agreements without the prior review or approval of the Secretary.

Entering into a TERA would—at least in theory—address the problems the Tribe has faced. However, the implementing regulations diminished the scope of authority to be obtained by a TERA tribe by preserving the Federal Government's prerogative in carrying out an array of functions—called "inherently Federal functions" in the vernacular—an undefined term that could render the Act's goal of fostering tribal decision making and self-determination practically meaningless. Despite the Tribe's repeated requests for clarification of the TERA process, and in particular, for clarification on what constitutes an "inherently Federal function" for which the Tribe would not be allowed to assume authority under the Department's regulations, the Department of the Interior has refused to provide guidance. Fortunately, Indian energy legislation currently pending would address other inefficiencies in the TERA process, but does not address the "inherently Federal function" dilemma.

The Department is also hoping that its "one stop shop" (the Indian Energy Service Center) will help address the problem of delays in energy transaction processing on Indian lands, but the Tribe has opposed this idea since its inception out of concern that it could pull already scarce staffing resources from local agencies. Insufficient staffing at the Southern Ute Agency is a long-standing problem, and the Regional Office has told the Tribe it could take up to 4 years to obtain the cost of living adjustment needed to help attract qualified staff. For a time, the Southern Ute Agency's realty staff consisted of one administrative assistant. If the creation of the Indian Energy Service Center will serve as another obstacle to strengthening local agencies, the Service Center will be no solution at all. The Tribe has recently learned that the Service Center is now open for business, but the Tribe has not received official notification of its opening and neither the Tribe nor the Southern Ute Agency have received instructions as to how to utilize the Center.

WILLING AND ABLE TRIBES SHOULD BE ALLOWED GREATER AUTHORITY OVER ENERGY
DEVELOPMENT ON TRIBAL LANDS

Some tribes do not need or desire the current level of Federal interference and “oversight” in tribal energy development, and in some instances like at Southern Ute, the Federal “oversight” is a massive and quantifiable impediment to the Tribe’s ability to develop its own resources. The Tribe has consistently demonstrated that it can successfully complete major undertakings more quickly and effectively than Federal agencies can.

For example, after a 2014 Office of Trust Review and Audit (OTRA) report revealed the massive mishandling of the Tribe’s priceless, historical trust and realty records at the Southern Ute Agency, and after months of the Tribe virtually begging Interior to be allowed to help solve the problem, the BIA finally entered into a P.L. 93–638 contract that authorized the Tribe to (largely with the Tribe’s own funding) scan and organize the Bureau’s own files at the Southern Ute Agency before they would be sent to the American Indian Records Repository. The electronic files will then be sent off site, where they will be organized in accordance with the Bureau’s filing protocol, the 16 BIAM, which has been only loosely followed at the Southern Ute Agency in past decades. The electronic files are then being indexed into the Tribe’s proprietary Geographic Information System (GIS). This scanning project, which utilizes \$250,000 from the Department of the Interior and more than \$1M of tribal money and the dedication of tribal staff, is well worth the money to the Tribe. The Tribe is well-equipped to define and articulate its best interests, yet the ethos of Federal agencies is to second-guess and over-rule it. This makes no sense, particularly given that Federal agencies cannot themselves meet the Tribe’s needs, and in at least this instance, was the cause of the problem.

As another example, the Southern Ute Indian Tribe, as well as operators on the Reservation, prefer to handle the renewal of an operator’s rights-of-way all at once. This utterly rational approach allows the Tribe to more easily monitor the end date and renegotiate renewals when an operator’s hundreds of rights-of-way are handled together. In one instance, the Tribe was even able to leverage the renewals to require an operator on the Reservation to replace several grandfathered high pollutant-emitting 1950s-era compressor engines in lieu of paying compensation for the right-of-way renewal. However, when the Tribe presented one such “global rights-of-way” package to the Southern Ute Agency for approval, it took the Agency approximately 4 years to approve it. The Tribe later learned that the biggest hurdle to prompt approval was that there was no effective way to enter the rights-of-way into the Department’s Trust Asset and Accounting Management System (TAAMS). The unwieldiness of TAAMS has been cited numerous times as an excuse for delays in energy transaction processing and as an excuse for why the BIA cannot assist the Tribe. The problem with the TAAMS system is well documented. (See U.S. Gov’t Accountability Office, GAO–15–502, Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands; Office of Inspector General, U.S. Dep’t of the Interior, Report No.: CR–EV–BIA–0011–2014, Bureau of Indian Affairs’ Southern Ute Agency’s Management of the Southern Ute Tribe’s Energy Resources.)

To improve access to critical mineral resource information and to avoid being hamstrung by TAAMS, the Tribe’s Department of Energy has scanned its entire set of files and developed an associated GIS system that allows each document to be linked to a location on a map. Together the store of digital documents and the GIS make up the Tribe’s Department of Energy’s “Land Information Management System” and represents a major improvement to tribal operations. Basically, because the BIA lacks the technology and sophistication required to manage the Tribe’s energy resources adequately, the Tribe developed its own database in-house, complete with the GIS module that TAAMS lacks. Juxtapositions like these—the disparity between the Tribe’s technological acuity as compared to Interior’s technological bankruptcy—make the “inherent Federal function” requirement all the more patronizing and meaningless.

“What is it that we need to do, to help you help us?” is a common refrain in meetings between the Southern Ute Tribal Council and Interior officials. The Tribe has implored the BIA in particular to accept the Tribe’s countless offers to assist. BIA has repeatedly resisted those offers for reasons that are not particularly compelling. It is perfectly clear that the BIA does not have the data, resources, technological capabilities, or staffing to meet the needs of tribes. The Tribe has data, resources, staffing, technological capabilities, and the incentive to improve the situation.

The Department constantly cites lack of resources as the reason for delays, but in the Tribe’s experience, it sometimes seems as if more Federal resources are expended trying to thwart the Tribe’s exercise of self-determination than are spent

supporting the Tribe. For example, when the Agency's records were discovered to be in utter disarray, and after an OTRA audit resulted in findings of records in jeopardy, the Tribe tried to assist the Bureau with cleanup and organization. However, the Bureau told the Tribe that because of its trust responsibility, tribal employees assisting with the Tribe's records needed to have extensive background checks, and staff from the BIA's Albuquerque Area Office met with tribal representatives in Ignacio to explain that the tribal employees did not have the knowledge and expertise necessary to assist. To address this, the Tribe had several of its employees go through the Department's background check process, which involved a long application, a 160-mile round trip drive to be finger-printed and have a photograph taken for facial recognition, and an hour-long interview with an Office of Personnel Management contract investigator. This process took many months, as did the negotiation of an MOU to establish the parameters within which the Tribe could provide assistance. The Tribe even hired local museum archivists to conduct training on archival techniques for Agency and tribal staff so that the BIA would allow tribal staff to handle the tribal records that had been desecrated by the BIA for decades. Time and time again the BIA held up its trust responsibility to the Tribe as the reason it could not allow the Tribe to assist.

CONCLUSION

Like other energy tribes, the Southern Ute Indian Tribe's economic prosperity is due in large part to responsible energy development, and because of the Tribe's energy resources, tribal members have education, health, and employment benefits they would not likely otherwise have. The Southern Ute Indian Tribe, like many other tribes, is well-equipped to utilize its own energy resources, particularly if given ever-increasing self-determination, and if limited Federal resources are used to encourage those efforts rather than stifling them. The Tribe respectfully suggests that in some instances, the best way for the United States to uphold its trust responsibility would be to step aside. The Tribe appreciates the continued efforts of this committee and others to encourage tribal self-determination through economic and energy development.

The CHAIRMAN. Thank you. I appreciate your willingness to be here.

[Disturbance in Hearing Room.]

The CHAIRMAN. I am sorry. This is a congressional hearing, and this kind of demonstration is not allowed in Congress. So, if you would walk away, I would appreciate it.

Voice of LAW ENFORCEMENT OFFICER. I will ask you again to leave. There are no signs allowed in here, so you are going to be asked to leave. So, would you do that, please, before you are removed? Are you not going to leave? It is simply a yes or no question. Please leave. You guys need to go. You guys need to leave. Please do that. Are you going to leave on your own, or are we going to have to remove you? Come on, let's go.

The CHAIRMAN. All right. Now, we will continue to see how real people can actually be helped in this situation.

Mr. Ferguson, you are the next witness. We appreciate you being here. You are recognized for 5 minutes for your presentation.

STATEMENT OF THE HONORABLE JACK FERGUSON, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, REPRESENTATIVE, INTERTRIBAL TIMBER COUNCIL, NESPELEM, WASHINGTON

Mr. FERGUSON. Good morning, Chairman Bishop and members of the committee. My name is Jack Ferguson, and I am a member of the Colville Business Council, which is the governing body of the Colville Confederated Tribes of the Colville Reservation. I also serve as the Colville Tribes' delegate to the Intertribal Timber

Council. My testimony today is on behalf of both the Colville Tribes and the ITC. I am joined today by Cody Desautel, the Land and Property Director for the Colville Tribes, who will be able to answer any type of questions.

As explained in my written statement, both Colville Tribes and ITC urge Congress to authorize new tools to promote tribal biomass development and forest help on Federal forest land. The Colville Reservation is located in North Central Washington State and covers 1.4 million acres. More than 920,000 of those acres are forest land, and the reservation borders two national forests. Colville Tribes has explored woody biomass opportunities in the past and continues to evaluate opportunities to make use of on-reservation and neighboring forest land.

Between fuel costs, hauling distance, access to power grid, and fluctuating incentives for renewable energy, profit margins are razor thin for forest biomass energy. Having a reliable wood supply is absolutely critical for tribes and outside investors to connect resources to biomass projects.

The Colville Tribes developed the Tribal Biomass Demonstration Project which is included as Section 6 in Congressman Don Young's Native American Energy Act. It would amend the Tribal Forest Protection Act to require Federal agencies to enter into long-term contracts with Indian tribes to allow the tribes to develop biomass resources on Federal lands.

Existing authorities authorize but do not direct Federal agencies to enter into such arrangements. This new language would change that and provide a more certain wood supply. It would also authorize tribes to use on-reservation forest management practices on those Federal lands that are included in the demonstration projects.

As this committee has examined in prior areas, tribal forest management practices are much more sustainable, effective, and efficient than those of Federal land managers. We believe that this new demonstration project authority, if enacted into law, would provide certainty of wood supply and enhance forest health on Federal lands. The ability to enter into agreements with terms longer than 10 years, the current limit under existing authorities, will greatly contribute to the ability of Indian tribes to secure financing and otherwise develop biomass projects.

The Colville Tribes and the ITC urge the committee to ensure that this provision is included in any final version of a national energy bill.

Congress should provide additional tools to expedite harvesting of small-diameter logs and improve forest health on Federal lands. Beyond the biomass demonstration project, the Colville Tribes and the ITC also believe that Congress should enact additional tools that would accelerate the harvest of small-diameter timber on Federal lands. Several of these tools are currently being discussed as part of the House-Senate Conference on the national energy bill.

For example, time lines could be added to ensure that the tribes are able to meaningfully utilize the Tribal Forest Protection Act. Only a handful of TFPA projects have been implemented in the last 12 years since enactment. Part of the reason is that Federal

agencies do not have firm deadlines to complete scoping and planning work for these projects.

Like many other reservations, the Colville Reservation's forests face imminent threat from pests that have infected large areas of the Colville and Okanogan National Forests, specifically the spruce budworm and mountain pine beetle. Some of the affected areas are currently just a few miles north of our reservation boundary. Wild land fire from neighboring Federal lands also continues to pose a danger to the Colville Reservation. Many areas of the neighboring national forests contain overstocked stands with fuel loadings well outside historic ranges. When fires occur on these stands, they are extremely difficult to manage.

The ITC and the Colville Tribes also support the use of 638 contracting for all Federal departments to allow tribes to directly conduct TFPA projects to protect their lands and communities. This authority, also under current discussion in the House and Senate energy conference, would allow tribes to bring more of their knowledge of the landscape to Federal forest management. In the future, the Colville Tribes would also like to see additional authority to conduct and contract other Forest Service activities under 638 authority.

Finally, ITC and the Colville Tribes support the provisions in the Tribal Forestry Participation and Protection Act that authorize the Secretaries of Agriculture and Interior to work with tribes to carry out additional forest health projects using the Federal laws and regulations that are currently used on tribal trust forests. Again, in our experience, Indian tribes are far superior forest land managers than Federal agencies.

The Colville Tribes and the ITC thank the committee for convening this hearing. This concludes my testimony and I will be happy to answer any questions that members of the committee may have.

[The prepared statement of Mr. Ferguson follows:]

PREPARED STATEMENT OF JACK FERGUSON, MEMBER, COLVILLE BUSINESS COUNCIL, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION AND BOARD MEMBER, INTERTRIBAL TIMBER COUNCIL

Good morning Chairman Bishop and members of the committee. My name is Jack Ferguson and I am a member of the Colville Business Council, the governing body of the Confederated Tribes of the Colville reservation ("Colville Tribes" or the "CCT"). I also serve as the Colville Tribes' delegate to the Intertribal Timber Council ("ITC"). My testimony today is behalf of both the Colville Tribes and the ITC and focuses on the need for Congress to authorize new tools to promote tribal biomass development and forest health on Federal forest land.

Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is a confederation of 12 aboriginal tribes and bands from all across eastern Washington State. The present day Colville Reservation covers approximately 1.4 million acres and its boundaries include parts of Okanogan and Ferry Counties. The CCT has more than 9,400 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest and the second largest in the state of Washington. About half of the Colville Tribes' members live on or near the Colville Reservation. Of the 1.4 million acres that comprise the Colville Reservation, more than 922,240 acres are forested land.

The Colville Reservation originally consisted of nearly 3 million acres and included all of the area north of the present day Reservation bounded by the Columbia and Okanogan Rivers. This 1.5-million-acre area, referred to as the "North Half" was opened to the public domain in 1891 in exchange for reserving hunting and fishing rights to the CCT and its members. Most of the Colville National Forest and significant portions of the Okanogan National Forest are

located within the North Half. Both forests are contiguous to most of the northern boundary of the Colville Reservation.

THE NEED FOR RELIABLE WOOD SUPPLY FOR BIOMASS PROJECTS

Between fuel costs, hauling distance, access to the power grid, and fluctuating incentives for renewable energy, profit margins are razor thin for forest biomass energy. As such, certainty of wood supply is absolutely critical for tribes or third party financiers to invest resources in biomass projects.

The Colville Tribes developed the Tribal Biomass Demonstration Project, which is included as section 6 in the Native American Energy Act (H.R. 538) and was included in versions of that legislation introduced in prior Congresses. Section 6 would add a new section to the Tribal Forest Protection Act of 2004 (“TFPA”) that would establish a 5-year demonstration project. The demonstration project would require the Secretaries of Agriculture and Interior to enter into contracts or other agreements with Indian tribes to promote biomass energy production by providing reliable supplies of woody biomass from Federal land.

The demonstration project in H.R. 538 would *require* the applicable Secretary to enter into at least four new projects during the 5-year authorization that meet the requisite eligibility criteria—a total of 20 projects. Existing authorities authorize, but do not direct, Federal agencies to enter into such arrangements. It would also allow for tribal management practices to apply to areas included in contracts or agreements entered into under demonstration projects. As this committee has examined in prior hearings on Indian forest management, tribal forest sustainable management practices are much more effective and efficient than those of Federal land managers.

Contracts or agreements entered into under the demonstration project could have maximum terms of 20 years, with the ability to renew for additional 10-year terms. The ability to enter into agreements with terms longer than 10 years—the current limit under existing authorities—will greatly contribute to the ability of Indian tribes to secure financing and otherwise develop biomass projects.

The demonstration project is also included in S. 209, which is part of the House-Senate conference on the Energy Policy Modernization Act (EPMA). Mandatory agreements with Federal land management agencies like those provided in the Tribal Biomass Demonstration Project would be extremely helpful in providing some level of certainty of wood supply and enhancing forest health on Federal lands. The Colville Tribes and the ITC urge the committee to ensure that this provision is included in any final version of the EPMA.

CONGRESS SHOULD PROVIDE ADDITIONAL TOOLS TO EXPEDITE HARVEST OF SMALL DIAMETER LOGS AND IMPROVE FOREST HEALTH ON FEDERAL LANDS

Additional tools should be provided to Federal agencies to accelerate and sustain the production of small diameter material available for biomass projects and to otherwise improve forest health on Federal lands. Like the Native American Energy Act, many of these tools are currently being discussed as part of the House-Senate conference on the EPMA. Examples include:

- *Timelines for TFPA Projects:* The TFPA currently allows tribes to request forest health treatments be conducted on Federal land adjacent to tribal forests. However, only a handful of TFPA projects have been implemented in the 12 years since enactment. Like many other reservations, the Colville Reservation’s forests face an imminent threat from pests that have infected large areas of the Colville and the Okanogan National Forests, specifically the spruce budworm and mountain pine beetle. Some of the infected areas are currently just a few miles north of our Reservation boundary. Wildland fire from neighboring Federal lands also continues to pose a danger to the Colville Reservation. Many areas of the neighboring national forests contain overstocked stands with fuel loadings well outside historic ranges. When fires occur on these stands they are extremely difficult to manage and pose an extreme risk to the CCT’s trust lands.

The ITC and the U.S. Forest Service have worked to improve TFPA implementation and there is a growing number of projects in the pipeline. Both the ITC and the Colville Tribes supports provisions in H.R. 2647, the House substitute amendment to EPMA, and Senator Daines’ “Tribal Forestry Participation and Protection Act” that would improve the certainty and timeliness of TFPA projects.

- *638 Authority for TFPA*: The ITC and the Colville Tribes support the use of “638” contracting for all Federal departments to allow tribes to directly conduct TFPA projects to protect their lands and communities. This authority, also under current discussion in the EPMA conference, would allow tribes to bring more of their knowledge of the landscape to Federal forest management. In the future, the Colville Tribes would also like to see additional authority to contract other Forest Service activities under 638 authority.
- *Tribal management pilot project*: Finally, ITC and the Colville Tribes support the provisions in the “Tribal Forestry Participation and Protection Act” that authorize the Secretaries of Agriculture and Interior to work with tribes to carry out additional forest health projects using the Federal laws and regulations that are currently used on tribal trust forests. This is a discretionary, limited authority under which tribes and Federal land managers can replicate lessons and efficiencies found on tribal forests. This authority could also be used to implement section 6 of the Native American Energy Act and promote biomass.

The Colville Tribes and the ITC appreciate the committee convening this hearing and its interest in expanding tribes’ ability to develop energy resources.

The CHAIRMAN. Thank you. I appreciate that.

We next turn to Mr. Glenn of the Arctic Slope Regional Corporation.

STATEMENT OF RICHARD GLENN, EXECUTIVE VICE PRESIDENT, LANDS AND NATURAL RESOURCES, ARCTIC SLOPE REGIONAL CORPORATION, BARROW, ALASKA

Mr. GLENN. Thank you, Chairman Bishop, Member Westerman, and fellow panelists and guests. My name is Richard Glenn. I am the Vice President for Lands and Natural Resources—

The CHAIRMAN. I am sorry. You are going to be interrupted again. I apologize for that.

[Disturbance in hearing room.]

The CHAIRMAN. All right. Before you start again, let me express my appreciation to the law enforcement here in New Mexico for handling this in a very nice, calm, and easy way, and hopefully no one will interrupt you again.

Mr. Glenn, why don’t you start over again?

Mr. GLENN. Thank you, Mr. Chairman.

Mr. Chairman, Member Westerman and committee members, staff, and my panel guests, I am from Barrow, Alaska, the northern-most part of the state. I work for Arctic Slope Regional Corporation as the Vice President of Lands and Natural Resources. Our region contains eight communities. They are not connected by any roads, in an area about the size of Montana. Our residents are Iñupiat Eskimos. They rely on a clean environment for a subsistence lifestyle from the river, the land, and the ocean. And we also rely on energy development for the communities that we can come home to from our subsistence activities.

ASRC was created by the Alaska Native Claims Settlement Act of 1971. It owns about 5 million acres of land on the North Slope, much of it with energy and mineral potential.

The story in Alaska is a little bit different, but I am thankful that the Southern Ute story was told before mine because I get to save a little bit of time. There are a lot of parallels between our two stories, but the Alaska story is a little bit different.

Briefly, the indigenous leadership of Alaska sanctioned the formation of our tribes. The same leadership at first opposed and then abided by the terms of the Native Claims Settlement Act, which extinguished aboriginal title to lands. Tribes continue to exist but, in general, tribes do not own lands in our region. The land ownership of formerly tribal land now exists in these Native-owned regional and village corporations.

In addition to that, we use the tools of the state government to exercise influence and control and to benefit from the presence of any industry in our region. In our case, the only industry that was present was the oil and gas exploration industry.

In 1972, the residents of our region voted to form a borough, a county-like government to tax the presence of industry in our region and to use the taxes to provide quality-of-life improvements to our communities, to exercise permitting and zoning controls, and basically to build communities from scratch.

This story in and of itself is a story of self-determination. But interwoven with this story is the story of the regional corporation and its ownership of mineral lands. Most of the oil and gas produced on Alaska's North Slope has been produced on state lands, which has been great for tax benefits and for jobs, but there is no royalty involved directly to our Native corporations. It was not until the year 2000 that lands began to produce natural resources that were owned jointly by the state and our Native people.

Yet, this small, brief time of production has yielded great benefits both to the Native people in our eight communities and to the Alaska Natives statewide in Alaska. It can be summarized by the history of production from the Alpine field located in the Colville River Delta. This is Alaska's Colville River. In this case, we have joint ownership of the subsurface by the state and the Alaska Natives of the area, and we have this little bit of socialism programmed into the Settlement Act that says for any Native regional corporation that hosts mineral wealth, 70 percent of that wealth shall be distributed to all the other regions of the state; and hopefully, if there is mineral wealth elsewhere, 70 percent of their wealth is distributed similarly. In this way, there is a fishnet fabric of sharing of resource revenue.

So, over the course of its production, the alpine field on Native-owned lands in Alaska has distributed about a billion dollars to Alaska Natives statewide. If you use the 70/30 formula, about several hundred million, actually equaling tens of millions of dollars a year has directly benefited Alaska's North Slope Native people. We have used this resource revenue to bootstrap our Native Corporation to advance and evolve into other areas. We are doing things beyond resource development, and we are engaged in commercial enterprises across the country.

The story of our history is different, yet, we are a region that depends on resource development. We have shepherded it and controlled it to the greatest degree possible, and the story continues. We are involved in continued exploration of gas and oil resources in our region, and we have improved the quality of life for the residents of our small communities.

Thank you.

[The prepared statement of Mr. Glenn follows:]

PREPARED STATEMENT OF RICHARD K. GLENN, EXECUTIVE VICE-PRESIDENT FOR
LANDS AND NATURAL RESOURCES, ARCTIC SLOPE REGIONAL CORPORATION

My name is Richard Glenn and I am a resident of Barrow, on Alaska's North Slope. I serve as Executive Vice President for Lands and Natural Resources of Arctic Slope Regional Corporation (ASRC).

ABOUT ASRC

The Arctic Slope Regional Corporation is 1 of 12 land-owning Alaska Native regional corporations representing created at the direction of Congress under the terms of the Alaska Native Claims Settlement Act of 1971 (ANCSA). ASRC's region is the North Slope of Alaska and encompasses 55 million acres (the informal names "North Slope" and "Arctic Slope" are geographically identical and are alternately used when one or the other has become more associated with a given usage or is a part of a formal name). The North Slope region includes the villages of Point Hope, Point Lay, Wainwright, Atkasuk, Barrow, Nuiqsut, Kaktovik, and Anaktuvuk Pass. The North Slope residents of the villages that I have named are also citizens of the North Slope Borough, a home-rule municipality. The residents are largely Iñupiat (North Alaskan "Eskimos"); and they comprise many of the shareholder owners of ASRC. North Slope village residents depend on subsistence resources from the land, rivers and ocean, as they have for millennia. Within this large region ASRC also holds title to approximately 5 million acres of surface and subsurface estate conveyed to it by ANCSA, much of it with energy, mineral and other resource potential. Among many other efforts, ASRC pursues and benefits from natural resource development on and near its lands. Energy development of Native-owned and State-owned lands is a major component of the success of ASRC and its region. Energy resource development and in some cases energy resource ownership have provided for substantial gains in economic self-determination for ASRC's growing shareholder base of approximately 13,000.

Under ANCSA, Congress created Native corporations, including ASRC, as profit-making entities "to provide benefits to its shareholders who are Natives or descendants of Natives or to its shareholders' immediate family members who are Natives or descendants of Natives to promote the health, education or welfare of such shareholders or family members." Consistent with this unique mandate, ASRC is committed both to providing sound financial returns to our shareholders in the form of jobs and dividends, and to preserving our Iñupiat way of life, culture and traditions, including the ability to hunt for food to provide for our communities. A portion of our corporate revenues are invested in initiatives that aim to promote and support an educated shareholder base, healthy communities and sustainable local economies. Our perspective is based on the dual realities that our Iñupiat culture and communities depend upon a healthy ecosystem and the subsistence resources it provides *and* upon present and future oil and gas development as the foundation of a sustained North Slope economy. Perhaps however it is useful to see how Native corporations are related to Alaska Native tribes and local communities and governments.

WHY ALASKA IS DIFFERENT: NORTH SLOPE LAND AND RESOURCE OWNERSHIP

Mr. Chairman and committee members, the present layers of local government, resource ownership and representation in our region can be very confusing for outsiders, even for those who are familiar with tribal relations and governance. A brief review may be helpful for some and is included in my written testimony.

The Native-occupied lands of northern Alaska were never ceded away by any treaty nor lost in any battle. The Treaty of Cession, which ratified the United States' 1867 purchase of Alaska from Russia recognized that the Native residents of Alaska existed and had rights. Following Alaska's purchase, however, the Alaska Natives' land rights remained in limbo for generations. While Alaska was still a territory, the Federal Government appropriated massive swaths of land with little regard for the land ownership rights of the Natives who lived there (In the Arctic Slope region there were two: In 1926—the formation of the 23-million acre Naval Petroleum Reserve No. 4 by President Harding, and in 1960—the formation of the 8-million acre Arctic National Wildlife Range by President Eisenhower.).

Statehood in Alaska, in 1959, similarly overlooked aboriginal land and resource ownership rights. The state did allow for the formation of city (and eventually borough) governments which could tax, zone, and offer community improvements within their areas of authority, but offered no method to validate the assertion of aboriginal title. Against this land ownership vacuum, the exploration for energy resources around known oil and gas seeps on the North Slope intensified in the 1960s,

including the gobbling up of North Slope lands by the young state of Alaska for its own benefit. Tensions rose and eventually action was taken at the Federal level. In 1966 Interior Secretary Stewart Udall declared that no oil would be developed and no more state lands would be conveyed to Alaska until the issue of aboriginal title was resolved. The “land freeze” occurred right before the discovery of the massive Prudhoe Bay oil field in 1968–69. The terms of ANCSA were negotiated and debated in Congress and eventually ratified by December of 1971.

The result was the extinguishment of aboriginal land title in Alaska and the formation of land-owning Native regional and village corporations. The land base represented a fraction (in ASRC’s case about 10 percent) of the land that was originally claimed by the Natives. The Federal Government offered a cash settlement as additional compensation. With the land base and cash settlement as startup assets, the ANCSA corporations were intended to succeed as profitable corporations delivering benefits to their Alaskan Native shareholders.

Briefly, the indigenous leadership of the people of the North Slope sanctioned the formation of what were to become federally-recognized tribes. The same leadership at first opposed, and then abided by the terms of ANCSA, which extinguished aboriginal title. Some lands with resource potential were conveyed back to the Arctic Slope Native corporations, along with an additional cash settlement. The Federal and state governments took the remainder of the lands, a taking which still pains many of those who argued for or against the terms of ANCSA before ratification. Those of us who came of age during these years are of mixed views on this history. For the most part the leadership that negotiated the terms of ANCSA and my colleagues and I at ASRC today have been trying to make the best of the Act for the benefit of our shareholders.

Using myself as an example: By virtue of Indian Law, ANCSA law, and State law, I am a tribal member, a city and Borough resident, and a village and regional corporation shareholder. My tribe today possesses many rights similar to those of other Indian tribes, but in general owns no land or natural resources. My city and more predominantly my borough governments provide civic infrastructure and quality of life improvements to communities inhabited largely by our tribal members but also comprised of citizens of other ethnic groups. And my village and regional corporations own title to ANCSA-conveyed lands and natural resources, and have formed for-profit operating subsidiaries that offer employment and dividend benefits to their shareholders. The institutions that represent us are thus split into three broad swaths, yet braided together like rope and operate on our behalf.

ENERGY DEVELOPMENT AS A TOOL OF SELF-DETERMINATION—THE NORTH SLOPE BOROUGH

The 1972 formation of the North Slope Borough, a state-chartered home-rule government, was largely driven by the interest of the Inupiat community in protecting our traditional way of life and exercising permitting, zoning and taxation controls on the industry that was to develop after the Prudhoe Bay discovery. The foundational goals of the North Slope Borough were to protect the environment and to use local government tools to improve the quality of life in communities within its boundaries.

By using a strong permitting and zoning process, the Borough today (as it has ever since its inception) regulates energy development on its terms to the greatest degree possible. The Borough then taxes the real property value of the pipelines, drill rigs, and other oil field production and transportation infrastructure. The Borough uses the infrastructure-derived tax proceeds to build, operate and maintain local education facilities and quality of life improvements (airstrips, roads, reliable power, improved housing and health care centers) in every one of the villages of our region.

The presence of the oil and gas industry in our region is the economic base for what have become improvements to our cities and towns. Our community is empowered by oil and gas development. The North Slope Borough employs the largest number of village residents on the North Slope; maintains its own Department of Wildlife Management, which invests heavily in protecting our subsistence resources; and maintains stringent permitting requirements for oil and gas companies that operate within our region. Our people therefore depend on a healthy Arctic environment to support subsistence species (caribou, waterfowl, marine mammals, fish and others), and also depend on a healthy energy industry to provide the tax base that fuels the North Slope Borough government operations. While these dependencies appear to be in conflict, it is the view of many on the North Slope that it is a totally appropriate one.

NATIVE OWNERSHIP OF LANDS AND NATURAL RESOURCES: THE ASRC STORY

For ASRC North Slope energy development presented a related but different set of opportunities and issues. The lands conveyed to ASRC, some 5 million acres in total are located in areas that either have known resources or are highly prospective for oil, gas, coal, and minerals. Some of the lands are remote and very distant from areas of current exploration and production. The State and Federal lands of the North Slope also contain similar energy resource potential. In fact the overwhelming majority of lands developed in Alaska to date have been on state-owned lands. The supergiant Prudhoe Bay (initial production in the 1970s) and Kuparuk River (1980s) fields were discovered and developed on state-owned lands, for example. Their development was a boon to the North Slope Borough tax base and to local Alaska Native corporation contractors offering jobs in oilfield construction and operations. Generations of ASRC shareholders and North Slope village residents have explored job opportunities in the development of state-owned North Slope fields. But the development of the state-owned lands offered no direct royalty benefits to the shareholders of ASRC.

Exploration and development of oil and gas resources moved westward from the Prudhoe Bay/Kuparuk fields and eventually toward and into the Colville River delta. Finally, in the mid-1990s oil discoveries were made on Colville River delta lands that were owned jointly by the state of Alaska and Alaska Natives of ASRC (subsurface) and the Kuukpik Corporation (the surface landowner which was the ANCSA village corporation representing the people of the Colville River delta village of Nuiqsut). Facilities were carefully planned and constructed over the next 10 years and in 2000 production finally began from the ARCO Alaska Inc.-operated Alpine oil field. ASRC became a royalty revenue owner. Since production began, the Alpine oil field and its related satellite fields have produced a half a billion barrels of quality crude oil that has been shipped down the Trans Alaska Pipeline along with oil from the Prudhoe/Kuparuk and related fields that continue to produce to this day. Other Kuukpik/ASRC lands are slated for additional production.

The royalty benefits from the Alpine and satellite fields and from fields yet to produce represent tens of millions of dollars of benefits per year to ASRC and its shareholders over the lifetime of production. In addition a much larger portion of the royalty revenue has been distributed to all of the regional and village corporations of the state of Alaska by virtue of a provision in ANCSA that mandated for the sharing of natural resource wealth between all ANCSA corporations. The Act states in general, that *Seventy Per Cent (70 percent)* of natural resource royalty revenue received by a given regional corporation (and this includes oil, gas, minerals and timber resources) be shared amongst all the ANCSA regional corporations within Alaska, who must also share with the respective village corporations within their regions. As a result of its Colville River delta royalty position and the terms of ANCSA, ASRC has shared over a *billion dollars* to date with other ANCSA corporations in Alaska. Energy development has thus been a part of the economic self-determination of every Alaska Native who is a member of a village or regional corporation.

ECONOMIC SELF-DETERMINATION OF ALASKA'S NORTH SLOPE ALASKA NATIVES

In summary, the development of oil and gas resources in our region has fostered a stable local tax base that provides local education and community improvements that would otherwise be lacking or furnished at great expense by the Federal Government and other agencies. The development of Native-owned lands has provided a regular stream of royalty revenue that has allowed ASRC to grow its non-royalty subsidiaries. Today, royalty revenue is a significant, but not the only or even the largest contributing sector to ASRC's bottom line, and ASRC has become the largest privately owned corporation in Alaska. Meanwhile, ASRC distributes a significant portion of its annual net income to its shareholders in regularly distributed dividends.

The relationship with energy resources does not stop at the shoreline. The village of Wainwright, for example, is located within the ASRC region about 90 miles west of Barrow, Alaska. Wainwright's Native village corporation, Olgoonik, has been involved in the preliminary stages of Arctic OCS development. Since 2007, Olgoonik has supported oil industry activities with marine mammal observers, communications coordination between the industry and subsistence hunters, and crew change and supply support services. Olgoonik also has managed marine science studies in the Chukchi and Beaufort Seas. Other village corporations as well as ASRC itself have made similar inroads in this field of work.

And ASRC, along with six of our village corporations, created its own offshore development company, Arctic Inupiat Offshore (AIO). Where else in America does

BOEM find indigenous people investing proactively in offshore development so they may be positioned to assure that development benefits their communities while also protecting their way of life and culture? AIO representatives believe, by the way, that for the Bureau of Ocean Energy Management to set aside vast areas of the Beaufort and Chukchi Seas, or to give up completely on its Arctic Outer Continental Shelf program, would be to completely fail our Arctic communities who are not afraid to admit that they depend upon successful new exploration and production for the survival of our communities and our Native enterprises.

ASRC itself is engaged in the exploration and development of lands that are not part of its ANCSA conveyance. It is leasing and exploring state and federally owned lands much like the major oil companies that have dominated the history of North Slope exploration and production. Success in private exploration has the potential to yield many new benefits to the shareholders of ASRC.

In some parts of the world and some parts of America, indigenous people have been reduced to conservation refugees within their own homelands. Energy development on Alaska's North Slope has provided the wellspring for the growth of economic self-determination of the Natives of Alaska's North Slope and the whole state of Alaska. We have formed a home-rule government in our own region and diversified and grown ASRC into a multi-billion dollar corporation thanks in large part to successful exploration and development of Native-owned lands. To me, this sounds like the definition of economic-self determination.

The CHAIRMAN. Thank you.

Next we will have Mr. Denetsosie from the Navajo Oil and Gas Company. We recognize you for 5 minutes, please.

**STATEMENT OF LOUIS DENETSOSIE, PRESIDENT AND CEO,
NAVAJO NATION OIL AND GAS COMPANY, WINDOW ROCK,
ARIZONA**

Mr. DENETSOSIE. Thank you. Chairman Bishop, members of the committee, members of the public, and fellow presenters, good morning. My name is Louis Denetsosie. I am the CEO and President of the Navajo Nation Oil and Gas Company. It is a corporation owned by the Navajo Nation. I should mention that I am also former Attorney General for the Navajo Nation.

Right now, NNOGC produces over a million barrels of oil a year on the Navajo Nation, operates an 87-mile crude oil pipeline, and operates c-stores on the Navajo Nation. We have 84 employees, and that is down from about 115 since the oil prices went south.

I thank you for the opportunity to testify here on the important topic of tribal prosperity and self-determination through energy development. The Navajo Nation is really a major story in Indian Country. When the Navajos came back from the Bosque Redondo, they had 3 million acres. Now they have 17 million acres, and that is through the leadership and the culture of the people that managed to do this, and the Navajo has always reinvented itself. Unfortunately, our tribe became very dependent on coal, oil, and gas and the resource curse, and it is really time for the Navajo Nation to reinvent itself again. I heartily agree with Mr. Olguin. It is time for the government to step aside to let the Indian Nations do their thing.

They are very self-reliant. They have been in business with themselves and with the surrounding communities. So, in my testimony here today, I would like to shed some light on the barriers and regulatory hurdles faced by the oil and gas industry and how Congress can help spur more economic activity by eliminating these barriers.

The main thing with the legislation that is pending for reconciliation before Congress—and that is H.R. 538 and Senate Bill 209—we would like to see those reconciled and sent to the President for his signature. There are some very important provisions in there, and one of them is to allow Navajo to issue its own leases.

The Navajo Nation government is a very sophisticated government. It has its own laws to protect the environment. There is even fracking legislation pending in the Navajo Nation Council today. They face many of the same issues that are faced on the outside. But the Navajo Land Department and other executive branches of the Navajo Nation, they do a comprehensive and thorough job of performing environmental, archaeological, biological, and cultural resource studies of the impacts on the environment from oil and gas extraction, and that includes impacts from applications for permits to drill.

We would like this legislation to clarify the Nation's authority to issue its own oil and gas leases, and at the same time clarifying that and allowing the Nation to issue applications for permits to drill. They already approve them anyway. But let's remove all these different layers of regulation by the BIA and the Bureau of Land Management and do away with these redundant approvals that are required to issue permits, seismic permits and drilling permits. It takes a minimum of 4 years to start a drilling program on Navajo. That is really how it goes. Navajo has helium resources sitting in the ground right now. We can't even touch it.

Therefore, we urge very strongly that the legislation be reconciled and amendments to 25 U.S.C. 415(e) be passed by the Council.

As another example, BLM last week announced that they are adjusting the fee for APDs to \$9,610. Well, I have been the Attorney General, and as a member raised on the Navajo Nation, I just object to BLM collecting that money on our land, especially when the Navajo people do all the work for the issuance of those permits. That should rightfully go to Navajo. They can collect it on BLM land, fine. But in this case, that should not apply to Navajo at all, and I am sure it is the same with other tribes.

With regard to Senate Bill 209, there will be changes to the requirements for entering into energy resource agreements, or TERAs. One of the provisions in there is the creation of the Tribal Energy Development Organization. That is an entity that would be majority owned by the tribal landowner. Under that TERA, the tribe can issue leases and rights-of-way to the TEDO, much like NNOGC, without further BIA approval. Every tribe is a little bit different, but we like these options, and that should also go forward, too.

There are very many issues facing Indian Country. I probably have more time but I like to be brief and make my pitch for reconciling that legislation. Thank you very much.

[The prepared statement of Mr. Denetsosie follows:]

PREPARED STATEMENT OF LOUIS DENETSOSIE, CHIEF EXECUTIVE OFFICER, NAVAJO NATION OIL AND GAS COMPANY

Good morning. I am Louis Denetsosie, President and CEO of the Navajo Nation Oil and Gas Company ("NNOGC") and a member of the Navajo Nation. I am also a former Attorney General for the Navajo Nation. NNOGC produces over a million

barrels of oil a year on the Navajo Nation and operates an 87 mile crude oil pipeline and a number of c-stores and service stations on the Navajo Nation. NNOGC currently has 84 employees, virtually all of them tribal members.

Thank you for the opportunity to testify on the important topic of Tribal Prosperity and Self Determination through Energy Development. The Navajo Nation has been a major producer of coal for electricity generation and oil and gas in the Four Corners region of the reservation. The downturn in these industries has already had an adverse impact on the Navajo Nation economy as well as NNOGC and will continue to do so in coming years, therefore it is gratifying to have the Congress address these issues.

It is hoped that my testimony here will shed some light on some of the barriers and regulatory hurdles faced by the oil and gas industry in Indian Country and how Congress can spur more economic activity by lowering these barriers, including enacting legislation pending for reconciliation by the House of Representatives and the Senate.

NNOGC is in support of the legislation passed by the House of Representatives in H.R. 538 (Oct. 8, 2015), titled "An Act to facilitate the development of energy on Indian lands by reducing Federal regulations that impede tribal development of Indian lands, and for other purposes," and similar legislation passed by the Senate in S. 209, titled "An Act to amend the Indian Tribal Energy Development and Self Determination Act of 2005, and for other purposes." Enactment of a reconciled version of these two pieces of legislation by Congress, and particularly the amendments to 25 U.S.C. §415(e), is of tremendous importance to the Navajo Nation and NNOGC. The House version of those amendments is preferable from a self-determination perspective, as it would leave any requirement for a 10 year development period for oil and gas leases to be placed in an operating agreement or lease in the discretion of the Navajo Nation.

Removing the Bureau of Indian Affairs from the mineral lease approval process will eliminate unnecessary and burdensome layers of Federal regulation. The Navajo Nation has a sophisticated three-branch government. Through its Land Department and other executive branch agencies, the Navajo Nation comprehensively and thoroughly performs environmental, archaeological, biological and cultural resource studies of impacts on the environment from proposed oil and gas extraction, including impacts from applications for permit to drill ("APDs"). Clarifying the Navajo Nation's authority to issue its own oil and gas leases and drilling permits will remove additional layers of regulation by the Bureau of Indian Affairs and the Bureau of Land Management ("BLM"). Due to the redundant approvals that are required at present, it takes approximately 4 years to initiate a drilling program in Indian Country. That delay can make oil and gas exploration and production simply uneconomic on the Navajo Nation, and has been a significant hindrance to energy development by NNOGC. I therefore urge that reconciled legislation adopting the amendments to 25 U.S.C. §415(e) be passed by the House of Representatives.

I would also like to note to the committee that just last week the BLM announced that it is adjusting the fee for APDs on tribal lands to \$9,610. As a tribal member, I have no objection to the collection of this fee on BLM lands but any fees collected for APDs issued on Navajo land should go to the Navajo Nation. The Navajo Nation performs the vast majority of the environmental studies and evaluations necessary for issuance of APDs on reservation lands and the services provided by the BLM relative to APDs are minimal.

From my understanding, S. 209 would also make much needed changes to the requirements for entering into tribal energy resource agreements, or "TERAs," under Title V of the 2005 Energy Policy Act, P.L. 109-58. Although TERAs, once executed between tribes and the Federal Government, were intended to be a vehicle to improve energy development in Indian Country by removing requirements for further Federal approvals, to my knowledge, not a single tribe has entered into a TERA because the requirements are so onerous. S. 209 would streamline those requirements and would also create a new option for tribes to issue, without Federal approval, leases and rights-of-ways on tribal lands to a certified Tribal Energy Development Organization, or "TEDO," an entity that would be majority owned by the tribal landowner. Thus, an energy and business arm of the tribe, like NNOGC, could be certified as a TEDO and no longer have to get BIA approval for energy development on behalf of its tribal owner. TEDOs and TERAs, under the proposed amendments to P.L. 109-58, are excellent vehicles for tribal self-determination in energy development, and I urge that reconciled legislation adopting this language in S. 209 be passed by the House of Representatives.

Concerning other regulations not addressed by H.R. 538 and S. 209, NNOGC has concerns about the proposed BLM regulations to reduce waste of natural gas from

venting, flaring and leaks during oil and natural gas production activities and establishing when produced gas lost through venting, flaring or leaks is subject to royalties. The regulations, which are quite strict, are proposed to be codified at 43 Parts 3178 and 3179. The proposed regulations address an activity already regulated by states and other departments of the Federal Government. There are very few oil and gas pipelines on the Navajo Nation and thus venting and flaring under reasonable regulations is necessary if the industry is to be viable. For that reason alone, these regulations should not apply in Indian Country without the consent of the affected Indian tribe. Moreover, the regulations may be beyond BLM's delegated authority from Congress. In recently striking down hydraulic fracturing regulations promulgated by the BLM, the U.S. District Court for the District of Wyoming ruled that Congress has not delegated any authority to regulate environmental impacts from oil and gas activities to the Department of the Interior. *See State of Wyoming et al. v. Department of the Interior et al.*,—F.Supp.3d—, 2016 WL 3509415 (D. Wyo. June 21, 2016). That case is on appeal to the Tenth Circuit Court of Appeals, which will hopefully agree with the District Court's well-reasoned opinion.

Thank you for the opportunity to provide this testimony, and for your interest and assistance in improving tribal prosperity and self-determination in Indian Country and on the Navajo Nation, through energy development.

The CHAIRMAN. Thank you. Thank you again so very much.

Mr. Henson, you are, I believe, our economist on the panel, which means you have a right to be boring if you want.

[Laughter.]

Mr. HENSON. I will try not to be.

The CHAIRMAN. OK. I recognize you for 5 minutes.

**STATEMENT OF ERIC HENSON, SENIOR VICE PRESIDENT,
COMPASS LEXECON, RESEARCH AFFILIATE, HARVARD
PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT,
TUCSON, ARIZONA**

Mr. HENSON. My name is Eric Henson. I am a citizen of the Chickasaw Nation, located in Oklahoma. As you heard, I have a couple of jobs. I work at a place called Compass Lexecon in Boston, and I do economics consulting full time. I am also a Research Affiliate at the Harvard Project on American Indian Economic Development. A very short synopsis of the research that Harvard has done over the past 32 or so years is something you have already heard mentioned today—tribal governments do better when they have control over their own resources. This squares very nicely with the evolution that we have seen in a lot of government elections.

The incentives for risk and reward line up better when those who make the decisions potentially benefit the most from those decisions, and also potentially suffer the consequences of bad decisions. Having a Federal authority from thousands of miles away decide which leases should be approved and what appraisals should come in at, just does not square with the kind of risk and reward trade-off we tend to see that really helps economies in any setting, not just Indian Country.

One of the things everyone here knows is how important energy development is to a number of tribal lands, particularly out West and in Alaska. Mr. Glenn and I share the distinction of growing up in some of the world's greatest oil producing regions. I went to high school in a tiny little town in west Texas, and so I personally observed the benefits that can come with sensible oil and gas development. Of course, those same kinds of regulatory frameworks that

allow that to happen and increase the right incentives for that to happen apply to all sorts of Indian resources, including solar, biomass, and lumber. This is not confined only to hard minerals and nonrenewables.

As you have heard a couple of people talk about, the statistics for tribes are still pretty terrible in terms of the socioeconomic. There is this kind of, I think, knee-jerk reaction to the notion that, well, tribes have gaming now, so Indian tribes are not poor anymore. That is really not the case. We have a great diversity of tribes with incredibly divergent outcomes in terms of different enterprises. And gaming, because we have a few examples of large revenues coming into certain tribes, has tended to unfairly dominate the conversation. It kind of puts energy development in a bin that does not get the attention it deserves.

I really support the notion that you are trying to get some public attention for tribes that do not necessarily have gaming revenues driving their economies, kick-starting some development that really does make a big difference to a lot of people on the reservation and in places like Alaska, not only those that have the resources in the south.

A few things about the bill itself, H.R. 538. It appears to me to be on this trajectory now, the TERA and the HEARTH Act and the ITEDSA exclusive component, components of the HEARTH Act, or HEARTH-like components to them. I suppose that is a question that we can get into in the Q&A a little bit about its somewhat limited scope, Navajo-only and certain limitations that I would like to know more about in terms of why that cannot be expanded more broadly across Indian Country.

It has some explicit attempt to get the appraisal process moving more quickly, and I think that is a really great idea, and there are a number of other ideas we can probably pursue to bolster the appraisal process getting done more quickly. I have done some work for a number of tribes, including places like the Crow Reservation. Folks up there have these tremendous delays. I hear from people on the ground about how some of the delay problems arise from lack of funding at the BIA, lack of personnel in terms of skill and expertise, and background and workload. So, there are ways we can address this with maybe the carrot and the stick in the funding mechanisms, an explicit time limit, maybe some funding that goes directly to tribes for appraisals, just take those off the backlog that the BIA has, some process by which we can approach it from a multi-part solution rather than just only sticking with time limits for the BIA to approve.

One of the things I think we ought to keep in mind as we address the delay in things like appraisals is how incredibly important the BIA still is to energy development on tribal lands. In my work with tribes, one thing that you cannot do if you work 20 years in Indian Country is not recognize the great diversity that is out there. So, I hear from tribes like the Southern Ute about the delays that are still tremendously problematic, and I also hear from other tribes in certain situations, "Hey, you know, we have a well-funded, well-staffed area office, and we have this kind of ability to utilize some expertise that is already there. It is working for us as is."

In any proposed solution, I would urge everyone on the committee, while drafting legislation, keep in mind the incredible diversity and leave it in the tribal purview about how much of this might come under tribal activities versus how much might stay with the BIA, because the experiences out there on the ground are very different.

I have heard quite a bit over the last few weeks, as I have thought about this legislation, about other approaches that sometimes work, potentially funding appraisal teams inside tribes, or this notion of a one-stop shop where located close to Indian Country you can have the expertise instead of relying on the area offices, and different ways that tribes might be able to take on some of the backlog of the appraisals themselves and then run the approvals by the BIA without it flowing the other direction with this many-months delay we seem to be having.

That is, I think, my 5 minutes. I will stop there and look forward to the Q&A.

[The prepared statement of Mr. Henson follows:]

PREPARED STATEMENT OF ERIC CONRAD HENSON, SENIOR VICE PRESIDENT, COMPASS
LEXECON AND RESEARCH AFFILIATE, THE HARVARD PROJECT ON AMERICAN INDIAN
ECONOMIC DEVELOPMENT

I would like to take a moment to thank you for the opportunity to speak to you today in beautiful Santa Fe. My name is Eric Henson, and I am a Senior Vice President at Compass Lexecon, which is an economics consulting firm with offices located around the world.¹ I primarily work out of the Compass Lexecon offices in Boston, Massachusetts and Tucson, Arizona. In my economics consulting, I have worked on numerous projects involving oil and gas development, coal production, electric utilities, and the energy marketplace more broadly. A number of my consulting engagements have involved working with Native American tribes such as the Navajo Nation and the Crow Nation, both of which have substantial energy resources of the types at issue here. I also serve as a Research Affiliate with the Harvard Project on American Indian Economic Development,² and in that position I am engaged in an ongoing effort to understand what makes tribal economies work best.³ I am a citizen of the Chickasaw Nation, and I grew up in one of the country's great oil producing regions, the Permian Basin of West Texas.⁴

I have a Master's Degree in Public Policy from the John F. Kennedy School of Government at Harvard University, an MA in Economics from Southern Methodist University, and a BBA in Business Economics from the University of Texas at San Antonio. I attended Harvard as the Kennedy School's Christian Johnson Native American Fellow. I have been engaged in Indian affairs since graduate school; my Master's thesis at Harvard examined the importance of a uniform commercial code for economic development on the Crow Reservation.⁵ I've had the great privilege of visiting many of the tribal lands we will be discussing today.

THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

Since its inception in 1987, the Harvard Project has collaborated with Native Nations to understand how and why tribal economies, social institutions, and political systems either succeed or fail. At the Harvard Project, my colleagues and I

¹Compass Lexecon is an international economics consulting firm and is part of FTI Consulting.

²Referred to herein as "HPAIED" or "Harvard Project." The Harvard Project is based at Harvard's John F. Kennedy School of Government in Cambridge, MA. We partner with the Native Nations Institute, which is located at the University of Arizona in Tucson, AZ. The Native Nations Institute provides executive education and leadership programs, uniquely tailored to senior executives and managers within Native communities.

³See, e.g., The Harvard Project on American Indian Economic Development, *The State of the Native Nations: Conditions Under U.S. Policies of Self-Determination*, New York: Oxford University Press, 2008.

⁴I appear today not as a representative of Compass Lexecon or Harvard University. Furthermore, I have no financial interest in pending legislation that might impact my opinions in any way.

⁵A copy of my curriculum vitae was submitted for the Committee record.

undertake research and teaching specifically tailored to meet the needs of tribal communities and tribal leadership.

One of the major questions the Harvard Project has been grappling with is: How is it that, despite widely cited poverty and social distress, which is prevalent across numerous American Indian reservations, more and more tribes have been able to cast off the bonds of external economic dependence? We have seen an increasing number of tribes taking part in what we have often referred to as an “Indian Renaissance,” where dynamic self-sustaining economies are created by tribal actions. These economies are built upon, and supported by, vibrant political and social institutions. The success stories are wide-ranging, from the property development and management of the Tulalip Tribes in Washington State, to sustained energy-based projects at Southern Ute, to the diverse array of professional and construction services offered by Ho Chunk, Inc. in Nebraska. Many tribes have begun actively challenging century-long economic paradigms and demonstrating effective self-determination and governance. It is curious that, contemporaneously, a number of other tribes experience continued economic hardship, high unemployment, rampant social and physical health challenges, and the like. What might be the causes of the striking economic and social divergences within Indian Country?

In the first years of HPAIED, the founding researchers recognized that what was needed in Indian Country was not additional unsolicited interference from outsiders, but culturally specific educational programs and research, developed for tribes, and undertaken hand-in-hand with tribal governments. The results of these studies are channeled back to those who must deal with the daily challenges of improving the economies and social conditions in Native communities (i.e., Indian people working in Indian Country).

In accordance with the above-mentioned approach, graduate students at the Kennedy School of Government and at the Native Nations Institute (working in close coordination with tribes) have completed several hundred projects and field research reports, many of which were on matters specifically requested by the tribes. These field projects have ranged from welfare reform at the Navajo Nation to bison ranching at Cheyenne River, and from judicial reform at Hualapai to ski resort management for the White Mountain Apache. As part of our organization’s mission, many of these reports are available on our website from which all tribes can learn.⁶

Another important facet of the Harvard Project’s work is our *Honoring Nations* program. *Honoring Nations* is a competitive awards program that identifies, celebrates, and shares outstanding success stories in tribal governance. We honor tribes that exemplify successful tribal governance, and to date the Harvard Project has recognized tribal governmental programs ranging from the Eastern Band of Cherokee for their Tribal Sanitation Program (in 1999), to the Effective Law Enforcement Program of the Gila River Police Department (in 2003), to the Seniors Skilled Nursing Facility at the Tohono O’odham Hospice (in 2008), to the Tribal Fisheries Department at Nez Perce (in 2015). Since 1999, we have honored about 130 tribal governmental initiatives.⁷ HPAIED remains committed to empowering Native Nations through identifying the common characteristics of tribes that are successfully charting a course toward a socially, culturally, politically, and economically healthy future.

RESEARCH FINDINGS

Prior to the 1980s, there was a notable lack of research pertaining to economic development in Indian Country. The small amount that was available contained at least two consistent themes: First, the over-riding focus of thinking and policy-making was on what the Federal Government could do to create jobs, raise income, and increase household wealth. This helped contribute to the unbalanced relationship between the Bureau of Indian Affairs (“BIA”), other Federal programs, and the tribes, which often became dependent on Federal funding and expertise.

Second, the Federal policies and programs that did exist within Indian Country constituted what we refer to as a “Planner’s Approach” to economic and community development. The Planner’s Approach was simplistic in treating economic development as a fundamental question of resources and expertise, as opposed to one of incentives and institutions. Viewing the world through the lens of the Planner’s Approach, academics, government officials, and tribal leaders interpreted the underdevelopment seen on reservations as stemming from a lack of access to financial

⁶See the Harvard Project website at <http://www.hpaied.org/>.

⁷For more examples, see “Honoring Nations: Directory of Honored Programs 1998–2010,” *Honoring Nations Program*, The Harvard Project on American Indian Economic Development, at pages 9 and 11, at <http://hpaied.org/sites/default/files/documents/finalhndirectory.pdf>.

capital, technical skills, and managerial expertise. The Planner's Approach typically provided grants and loans in a well-intended effort to stimulate economic development. However, this heavy-handed approach was driven by Federal budget allocations and has had a strong adverse impact on many Native communities. This approach created a world in which grant writers were always in short supply and tribal politics revolved around which elected officials could most effectively capture (or perhaps extract), funds from the Federal Government. Under the Planner's Approach, what was originally intended to be a solution to underdevelopment instead seems to have perpetuated it, degrading the core tenets of economic development into a series of rent-seeking behaviors.⁸

A fundamental flaw of the Planner's Approach was the erroneous assumption that a nation's economic development is a mechanical process that can be achieved by way of the imposition of a predetermined blueprint. While it is advisable and even advantageous to plan ahead, it is an exercise of hubris to think that one can "plan" an economy, in the sense of expecting tribal councils, national legislatures, or Federal planners to correctly select a portfolio of businesses, projects, and activities that will not only survive, but will meet the needs of tribal citizens, and will thrive over time.⁹

The discussion above raises one obvious question: If one cannot "plan" an economy to arrive at productive and sustainable development, what is the alternative? While there is no predetermined blueprint for success, there are some general tenets for effective, long-term economic development, and these tenets are now being demonstrated by a large number of tribes in Indian Country. We have found that these tenets of sustainable development are applicable to developing nations the world over, and are being acted upon by many successful tribes in Indian Country. A discussion of these tenets is found below, and in contrast to the Planner's Approach, we refer to tribes that are building their communities under these principles as governments engaged in a "Nation Building" process.¹⁰

Institutions Matter: The nature of a society's institutions, whether social, cultural, and/or governmental, determines the incentives around productive or unproductive activity. Within the scope of our research, the Harvard Project and the Native Nations Institute have consistently found that a tribe's economic development is anemic, or worse, unless the tribe's institutions personify at least three characteristics. The key attributes are:

- *A Rule of Law.* A respect for tribal law and the establishment of legitimate means for dispute resolution.
- *Separation of Politics from Day-to-Day Administration and Business Affairs.* Enterprises and economic transactions are free from societal politics and power struggles.
- *Efficient Bureaucracy.* Clarity of procedures, good recordkeeping, efficient administration processes, reliable computer networks, and the like.

Culture Matters: Given the importance of institutions within a society, the social norms and world view of the citizens that interact with those institutions also matter.¹¹ This lesson, observed repeatedly in our research with Native Nations, is an

⁸"Rent seeking" is a term from economics and occurs when an organization or individual(s) seeks to obtain economic gain from others without reciprocating in the form of further wealth creation.

⁹Consider the natural experiment of the German economies after World War II. The parts of former Germany subjected to market forces (i.e., West Germany) became a powerhouse of development in post-war Europe. The parts of the former Germany subjected to centralized planning (i.e., East Germany) stagnated and the citizenry had to be forcefully restrained from leaving for better opportunities elsewhere. For a discussion in the context of Indian Country, see, the Statement of Joseph P. Kalt, *Establishing a Tribal Development Corporation, Before the U.S. Senate Committee on Indian Affairs*, September 20, 2004 (hereinafter, "2004 Kalt Testimony"), noting that "Economic development is an organic process. In an environment in which opportunities are subject to the vicissitudes of competition and continually changing marketplace conditions, economic development occurs as the sum of small, adaptive decisions of myriad individuals who by luck or preparation are in the right place at the right time to take advantage of unplanned prospects. Economic development is much more analogous to tenacious plants looking for places to pop up and take root, than to an engineered system."

¹⁰For more information on the Nation Building approach, see: The Harvard Project on American Indian Economic Development, *The State of the Native Nations: Conditions Under U.S. Policies of Self-Determination*, New York: Oxford University Press, 2008, starting at page 26.

¹¹Miriam Jorgensen, *Bringing the Background Forward: Evidence from Indian Country on the Social and Cultural Determinants of Economic Development*, Doctoral Dissertation, May 2000, at page 129.

important tenet regarding economic development. The importance of local conditions and political willpower in building and promoting effective institutions as part of economic development cannot be ignored. However, our research in Indian Country indicates that, for governing institutions to provide the foundation upon which sustained economic development can take place, there first must be a *cultural match*.¹²

One can think of cultural match as the consonance between the structure of a society's formal institutions of governance (and its economic development initiatives) and its underlying norms of political power and authority (i.e., culture).¹³ In order to function effectively, a society's institutions and corresponding economic development must be consistent with underlying cultural, political, and organizational norms. Simply put, they must be seen as legitimate in the eyes of the society's citizenry.

Sovereignty Matters: Self-determination is a key issue within Indian Country and its importance to economic development cannot be overlooked. There are four inseparable issues connecting sovereignty and self-determination to economic and community development within Indian Country. They are:

- *Design issues.* Without self-determination, it is impractical (and perhaps impossible) to change institutions so that they more closely match those of Native Nations and their unique economic needs.
- *Ownership issues.* Absent a strong sense of ownership, it is unquestionably difficult to get a local community involved and interested in the payoff from tribal economic investments.
- *Accountability issues.* Linked closely with the concept of ownership, those making the investments and program decisions need to be held accountable for how all Federal (and tribal) resources are used.
- *Leadership development issues.* There are an increasing number of astute, capable, highly experienced leaders emerging within Indian Country. This is demonstrated by tribes (and tribal leadership) taking charge of issues irrespective of historical (or concurrently existing) Federal support.

After years of research, it has become clear that tribes must have autonomy in order to foster institutions that are a cultural match for their societies. Successful tribal governments all exhibit effective institutions paired with a cultural match. We have come to believe that this is why policies of sovereignty and self-determination have been the only strategy that has shown any prospect of breaking the patterns of poverty and dependence that became so familiar on reservations from the late 1800s until at least the 1990s. It is only logical that it requires self-rule for a culture to put in place institutions that are a cultural match. Thus, we can restate the uniform qualities that have marked successful economic development in Indian Country as aggressive assertions of sovereignty, resulting in self-governed institutions that are characterized by a cultural match. It has repeatedly been shown that, when a tribe takes control of its institutions and runs them in congruence with its own cultural norms, the result is a set of economic, social, and political systems that work for its citizens.¹⁴ Continued dependence on the Federal Government for grants and guidance removes accountability for tribal leadership and undermines the processes necessary for stable and lasting economic development. The negative results of such dependence should not be surprising.

ENERGY DEVELOPMENT ON NATIVE AMERICAN LANDS

The importance of furthering Native American economic development and reducing Federal dependence can be highlighted by looking the socioeconomic conditions of Native American tribes. Consider a few basic statistics, illustrated in Figures 1 and 2. As shown in Figure 1, the annual per-capita income of American Indians living on the reservations has been consistently lower than (and often less than half that of) the U.S. average. In the period between 2006 and 2010, American Indians living on reservations had an average per-capita income of \$12,459, compared to the national average of \$26,893. Family poverty levels reflect this same shortfall: despite a decrease from 1990 to 2010, the family poverty rate for Native Americans in the 2006–2010 time period was 33.5 percent for the Navajo Nation and 31.7 percent for reservations other than Navajo, approximately three times the U.S.

¹² 2004 Kalt Testimony at pages 13–14.

¹³ 2004 Kalt Testimony at page 14.

¹⁴ Stephen Cornell and Joseph P. Kalt, "Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations," *Joint Occasional Papers on Native Affairs*, No. 2003–02, 2003.

average for that same time period (see Figure 2). Figure 3 further highlights income disparities for Native Americans, with particular focus on the Crow and Navajo Nations. As the figure shows, approximately 40 percent of Crow and Navajo people were living in poverty in 2014, relative to the 15 percent nationally.¹⁵ A potential contributing factor to this income disparity in 2014 could be that employment rates for many tribes, including some of the energy-producing tribes, lag behind the national average (see Figure 4). Lagging socioeconomic indicators such as these persist across energy-producing tribes; consider, for example, the Blackfeet, Sioux and Tohono O'odham tribes, which, like the Navajo and Crow Nations, are all endowed with substantial natural resources. Unemployment rates for these tribes are consistently much higher than the national average across the United States (unemployment data from 2007 to 2014 are shown by Figure 5). In 2012, the unemployment rate gap was the highest shown (at 14.2 percent); in 2008 the divergence in unemployment rates was "merely" 7.6 percent.

It is striking that these socioeconomic conditions were (and are) present on these reservations, despite the tribes' abundance of valuable and accessible natural resources. The wealth of available resources available to select tribes is detailed in Figure 6. Data for all tribes indicate that Indian lands hold almost 30 percent of the nation's coal reserves west of the Mississippi, 50 percent of potential uranium reserves, and 20 percent of known oil and natural gas reserves.¹⁶ These resources are estimated to be worth approximately \$1.5 trillion.¹⁷ Figure 7 further illustrates how important tribal energy resources are. As this figure shows, potential production of important commodities such as coal, uranium, and oil and natural gas is substantial. The largest producing states do in fact generate more of each of these energy sources than the potential from tribal lands, but the potential from tribal lands eclipses the second largest producing states (that is, tribal production of coal could be greater than that of West Virginia, tribal production of uranium could be greater than that of Texas, and tribal production of oil and gas could be greater than that of North Dakota).

In addition to coal, uranium, oil, and gas, tribal lands also hold large potential renewable energy resources. Wind, solar, geothermal and hydroelectric energy are all accessible in many tribal areas, but relatively few examples exist to demonstrate successful development of renewable energy supplies. For example, the U.S. Department of Energy notes that "Overall, the analysis shows that the technical potential on tribal lands is about 6 percent of the total national technical generation potential. This is disproportionately larger than the 2 percent tribal lands in the United States, indicating an increased potential density for renewable energy development on tribal lands."¹⁸ The potential that tribal energy development represents is largely untapped; the Department of the Interior indicates that only 2.1 million acres of Indian lands are being developed for their energy resources, while an additional 15 million acres with energy potential remain undeveloped. In other words, 88 percent of Indian surface lands have resources that could provide tremendous economic and social benefits to a number of tribes, but have yet to be developed.

Our meeting today has been arranged so that we can discuss the potential for enhancing energy development on American Indian lands by reducing Federal regulations that impede the process. By any measure, the potential resource base found on tribal lands is substantial. These largely untapped assets offer significant and unique prospects for individual citizens as well as entire tribal communities; successful energy development represents important revenue streams and higher socioeconomic standards for a number of tribes. If tribes choose to pursue energy development, they can see benefits from well-managed development such as well-paying jobs, substantial royalty and tax revenues to the tribes, and greater access to critical healthcare and social services, among several others. If these resources remain effectively inaccessible to tribes, then what is already a set of complex and difficult socioeconomic challenges that face the most economically disadvantaged people in the country could easily degrade further.¹⁹

¹⁵The U.S. Census, American Community Survey ("ACS") 5-year data are presented for Figures 3 and 5, because the U.S. Census typically provides the most complete and reliable data available.

¹⁶Shawn Regan and Terry L. Anderson, "Unlocking the Wealth of Indian Nations: Overcoming Obstacles to Tribal Energy Development," Property and Environment Research Center, February 2014 (hereinafter referred to as "PERC Report") at page 4.

¹⁷PERC Report at page 4.

¹⁸E. Doris, A. Lopez and D. Beckley, "Geospatial Analysis of Renewable Energy Technical Potential on Tribal Lands," U.S. Department of Energy, February 2013, at pages 1–2.

¹⁹Maura Grogan, Rebecca Morse and April Youpee-Roll, "Native American Lands and Natural Resource Development," Revenue Watch Institute, 2011, at pages 6–7.

The bill we are discussing today, H.R. 538, looks to streamline energy development on tribal lands by decreasing Federal oversight and regulation. Lessening the need for this regulation and oversight moves toward tribal autonomy and self-governance, and as the research noted above indicates, successful tribal development will depend on enhanced tribal decision-making authority over governmental and economic policies that affect tribal lands and resources.²⁰ Promoting opportunities for tribal self-determination and governance is something the Federal Government has tried to do over the last several decades, but has largely fallen short of in regard to energy development.

Congressional efforts to facilitate energy development on tribal lands include the Indian Tribal Energy Development and Self-Determination Act (“ITEDSA”) of 2005 (which is part of the Energy Policy Act of 2005). This legislation was an attempt to give tribes the option to exercise greater authority over their own energy resources. Under the ITEDSA, something known as the Tribal Energy Resource Agreement (“TERA”) allows a tribe, at its own discretion, to enter into leases, business agreements and right-of-way agreements for energy development on their lands without review or approval from the Secretary of the Interior. However, as is well known, not a single tribe has entered into a TERA agreement, about a decade after passage of the Act. This lack of adoption of TERAs is due to factors such as uncertainty about some of the TERA regulations and a complicated, confusing, and time-consuming application process.²¹

In contrast to the unutilized TERA, the more recent Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (“HEARTH”) provides a model which should help tribes accelerate the leasing of tribal surface lands.²² My understanding is that HEARTH has as its foundation ideas that were articulated in earlier limited legislation authorizing tribes such as the Navajo Nation to independently lease surface lands without Secretarial approval for each individual lease; HEARTH extended these rights to all tribes.²³ In the context of energy, HEARTH allows for projects that lease only surface land and does not extend tribal leasing authority over subsurface extraction or exploration. Energy projects on surface land are often renewable energy projects, such as utility-scale solar or wind farms. While it is promising that under HEARTH tribes can implement their own regulations governing the leasing of Indian lands (including for renewable energy development), such projects have not yet taken off on tribal lands. As of March 2015 only one utility-scale wind facility was in operation on tribal land, with one more such facility and one utility-scale solar facility under construction at that time.²⁴ This is in stark contrast with the significant developments in utility-scale wind and solar capacity in the United States. Data indicate that in the decade between 2004 and 2013, 686 utility-scale wind projects and 778 utility-scale solar projects were constructed nationally.²⁵ This difference between renewable capacity added nationally and on tribal lands illustrates the need to create further provisions for tribes to develop their energy resources.

H.R. 538 takes the HEARTH provision of tribal surface land leasing one step further, specifically in the context of energy development and the Navajo Nation. Section 8 of the proposed bill contains a provision to allow the Navajo Nation to lease tribal land for the exploration, development, or extraction of mineral resources without Federal approval. This would allow for the Navajo Nation to engage in energy development beyond projects limited to the surface (i.e., such as utility-scale solar and wind facilities). It is possible that the Navajo Nation will benefit from such a provision as it is a tribe with substantial natural resources, and a capable

²⁰Stephen Cornell and Joseph P. Kalt, “Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn’t,” *Joint Occasional Papers on Native Affairs* No. 2005–02, 2006, at pages 14–15.

²¹*Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, U.S. Government Accountability Office, June 15, 2015 (“GAO Report”), at pages 32–33.

²²HEARTH does not cover subsurface leasing or the ability to grant rights-of-way (Code of Federal Regulations, Title 25—Indians, at § 162.006(b)(1)).

²³Monte Mills, “New Approaches to Energy Development in Indian Country,” *The Federal Lawyer*, April 2016 (“Mills Report”) at page 53. Under HEARTH, the Pueblo of Sandia was the second tribe (after the Federated Indians of Graton Rancheria) to be approved for tribal regulations on their land (U.S. Department of the Interior, “Secretary Salazar Signs Historic Agreement in New Mexico to Help Spur Economic Development in Indian Country,” March 14, 2013). The Governor of the Pueblo, Victor Montoya, said at the time he expected HEARTH to aid with elimination of red tape and quicker negotiations with companies looking to lease land. With the help of HEARTH, the Pueblo has been working to develop its airport and improve its retail center (*Albuquerque Journal*, “A ‘historic day’ at pueblo,” March 15, 2013).

²⁴GAO Report at page 2.

²⁵GAO Report at page 3.

governmental bureaucracy. However, Section 8 appears to be narrow in scope; it does not extend the subsurface leasing rights to tribes more broadly and somewhat constrains the Navajo Nation's ability to fully exploit energy projects as the Nation sees fit. Allowing tribes to develop and control their own resources has, in certain instances, been tremendously successful. Consider the example of the Red Willow Production Company, which is owned and operated by the Southern Ute Tribe in Colorado. Red Willow, which engages in oil extraction in a number of geographic areas and produces throughout the Western United States and offshore in the Gulf of Mexico, is but one of five energy companies operated by the Southern Ute Tribe. The success of the tribe's energy endeavors has allowed it to create a growth fund worth billions of dollars, and to provide sizable dividends to the tribe's citizens over a number of years.²⁶ Extending this section of H.R. 538 to tribes beyond the Navajo Nation, in a way that maintains the trust responsibility held by the United States toward tribes, could promote significant economic and energy development on tribal lands.

In addition to the provision for Navajo subsurface leasing without Federal approval, H.R. 538 sets out to reduce the time required for the approval process and lessen the potential for legal challenges (for example, imposing binding time limits on the appraisal and approval processes could significantly speed up the time taken to greenlight a project and prevent bureaucratic delays). Tribal energy development projects that have been stymied in the past have caused significant economic damages to tribes, and have led to skepticism in pursuing tribal projects among nontribal industry participants in the energy market. Streamlining the Federal appraisal process could make it easier for tribes to undertake energy development in pursuit of tribally-driven economic development and determination.²⁷ Similarly, language limiting legal fees that might be recovered by those bringing legal challenges to energy project could help insulate tribal energy development projects from costly delays, but may also have unintended consequences through chilling judicial access for parties that have legitimate standing to challenge certain developments.

While tribes such as the Southern Ute are benefiting from energy development, research has noted that some tribes that engage in the natural resource industries are often overly and unjustly burdened by the current system. Cumbersome regulations and/or past mismanagement by the Federal Government deter some tribes from proceeding with energy development. Complying with unwieldy Federal regulations and application processes can be incredibly time-intensive and complex, and mismanagement and delays of energy projects cost tribes a significant amount of revenues. Consider one example of bureaucratic impediments that have stymied energy development for tribes such as the Crow Nation. In January 2005, the Crow Tribal Council approved an oil and gas lease on tribal lands,²⁸ but development of the resource was blocked until September 2007 due to the excessively slow review and approval process in place at the BIA.²⁹ Additionally, the Crow Nation reports that BIA's records for surface and mineral ownership are repeatedly missing or out-of-date.³⁰ Persisting issues and inefficiencies, layers of regulatory oversight, lack of access to markets, higher-than-elsewhere permitting costs, and persistent infrastructure challenges create an environment of uncertainty and contribute to lackluster economic development.³¹

²⁶ PERC Report at pages 17–18.

²⁷ Mills Report at page 57. National Congress of American Indians, "Policy Update, 2016 Mid-Year Conference," 2016, at pages 13–14.

²⁸ Clair Johnson, "Crow Tribe signs lease with oil exploration firm," *Billings Gazette*, May 16, 2005, at <http://billingsgazette.com/news/state-and-regional/montana/crow-tribe-signs-lease-with-oil-exploration-firm/article85763605-8812-5993-a56d-8717f7c71bff.html>. See also, "Crow Tribe Signs oil and gas development deal," May 17, 2005, at <http://www.indianz.com/News/2005/008205.asp>.

²⁹ *Tribal Development of Energy Resources and the Creation of Energy Jobs on Indian Lands, Before the House Committee on Natural Resources, Subcommittee on Indian and Alaska Native Affairs*, 112th Cong. (2011), Statement of Scott Russell, Secretary of the Crow Nation, at page 13. Delayed approval of oil and gas leases can have a particularly detrimental impact on the potential revenues earned from energy development projects in a world of falling oil and gas prices. In cases where oil and gas prices have fallen significantly in the long waiting period between application submission and BIA approval, tribes have seen development opportunities abandoned. Development efforts not completed have effectively forced certain tribes to forego the potentially significant revenues that would have started flowing at higher price levels.

³⁰ See, e.g., *On Improving Tribal-Corporate Relation in the Mining Sector: A White Paper on Strategies for Both Sides of the Table*, HPAIED, April 2014, at <http://hpaied.org/sites/default/files/documents/miningrelations.pdf>, at page 91.

³¹ Joseph P. Kalt, "The Mining of Crow Nation Coal: Economic Impact on Crow Reservation, Big Horn County and Montana," February 4, 2014, at page 2.

Due to these bureaucratic inefficiencies and challenges, the BIA is not always able to aid tribal energy development to the best of its capabilities. The BIA is extremely important for the administration and management of tribal land held in trust by the Federal Government, and its smooth and timely functioning is essential for tribal energy development. An understaffed and overburdened BIA impedes tribes from capitalizing on their own resources. In recent discussions I have had with those working on the ground in energy development for tribes, I have heard differing views on the BIA's role. For example, I have found several instances where a lack of funding, staffing, and expertise at the BIA acts as a roadblock to the timely energy development that tribes seek; I have also found that there are instances where tribes look to the BIA for its built-in expertise and assistance in leasing oil and gas properties, and report that the area BIA office works quickly and efficiently.³² As tribal experiences with the BIA are not positive across the board, it is important to reduce inefficiencies and streamline the BIA's approval and appraisal process. This can be accomplished by using Federal appropriations to provide the BIA with more of the funding it needs to increase its staff and expertise and by providing incentives for quick and timely action by existing BIA offices.

Other options to alleviate the congestion at the BIA include the possibility of administering block grants and/or setting up additional offices that serve as "one-stop shops" for tribes for appraisals, regulation enforcement, and administration of lands held in trust by the Federal Government. In recent discussions I have had with tribes engaged in energy development, the idea of block grants, or funding directly to certain tribes to carry out functions typically performed by the BIA, was largely well-received as a potential way to improve efficiency in tribal leasing for energy development. These types of grants could provide a given tribe with a fixed amount of funding for the tribe to hire third-party appraisers, to hire experts to assist in negotiating agreements with outside investors and developers, and to review royalty rate provisions and distribute royalty payments.³³ Consider the bottleneck that the appraisal process has often become. By giving tribes funding to cover what it costs to do the appraisals itself, in some circumstances the BIA could alleviate the backlog in reviewing lease applications, and reduce the financial burden of increasing its own staffing to handle a larger number of applications (and overcome existing backlogs where such backlogs exist). Additionally, more "one-stop shop" offices like the Federal Indian Minerals Leasing Office ("FIMO") situated at the Four Corners Region serving the Navajo, Hopi, Ute and Zuni Tribes should be set up. This office is the first of its kind, and both its proximity to tribes and its understanding of conditions on the ground uniquely position it to help streamline and accelerate projects on tribal lands.³⁴ Directing funding to the establishment of such offices could be beneficial to energy development for tribes by further alleviating congestion at the BIA and providing tribes with more accessible expertise.³⁵

Energy development is an important goal for tribes, and granting them the ability to capitalize on their own resources without Federal impediments will go a long way toward improving socioeconomic conditions for a number of tribes. This is evidenced by the significant gains in wealth for those tribes who have been able to develop and operate their own energy projects and by the significant losses for those tribes whose efforts have been stymied by failures in the current Federal system for oversight of these important energy developments. Streamlining energy development and minimizing Federal oversight that is inefficient will empower tribes to control their own lands in a more efficient and beneficial manner. At the same time, it is important to proceed with any new legislation in a way that maintains the trust responsibility held by the U.S. Government toward the tribes. The goal is not to

³² I note that the positive BIA feedback I have recently heard involves energy leases on tribal lands that are not reservation lands.

³³ U.S. Department of the Interior, "Tribal Grant Program to Assess, Evaluate and Promote Development of Tribal Energy and Mineral Resources."

³⁴ Office of Natural Resources Revenue, Department of the Interior, "Federal Indian Minerals Office," March 31, 2016 at <http://www.onrr.gov/IndianServices/fimo.htm>.

³⁵ Another "one-stop shop" is the still-nascent Indian Energy Service Center in Denver, CO. The Service Center will include personnel from several relevant segments of the Department of the Interior, and is expected to provide expertise, policy guidance, standardized procedures, and technical assistance as needed by tribes (see, e.g., Written Testimony of Lawrence Roberts, U.S. Government Accountability Office Report, "Indian Energy Development—Poor Management by BIA has Hindered Energy Development on Indian Lands," Before the U.S. Senate Committee on Indian Affairs, October 21, 2015). While the "one-stop shops" noted here might be beneficial, there are also potential drawbacks to consider. If not executed properly, these offices may exacerbate existing bottlenecks to energy development by simply consolidating them into one location, such as Denver. Offices of this type may also draw experienced technical advisers away from field offices where those personnel might have made a greater impact working more directly with the tribes located nearer the area offices.

upend the balance of responsibility but to create a business optimal environment for the tribes and help them benefit from the resources on their lands. There are several ways to work toward this, such as extending the subsurface leasing provisions included in H.R. 538 to tribes beyond the Navajo Nation, by providing the BIA with more funding to increase its staff and reduce the backlog of lease applications, by providing block grants to tribes for third-party appraisers, and by establishing more "one-stop shop" offices such as the FIMO.

The efforts I have described here can help promote the development of Native American energy resources, resulting in benefits to Native Nations and individual tribal citizens, through both enhanced economic development opportunities and more efficient exploitation of the energy resources we are all collectively fortunate to have within the boundaries of the United States. Clearly, this is an issue that is worthy of serious consideration by the U.S. Congress, and I thank you for allowing me to take part in this important discussion.

The CHAIRMAN. Thank you.

I appreciate all five of you for coming and sharing these concepts with us, both written as well as oral recommendations.

Now, under Rule 3(e), we have the opportunity for asking questions, a 5-minute limit for each of the questions, but once again we can be pretty flexible with that situation here.

I am going to ask Mr. Westerman if he would like to start the questioning process.

Mr. WESTERMAN. Thank you, Mr. Chairman. I would also like to thank the witnesses for their time today and for their enlightening testimony. I mentioned I was a freshman, so a lot of this is a learning experience to me, and it is beneficial to be here and to hear what is happening out in the real world.

Mr. Ferguson, you discussed woody biomass projects and how they are needed not only for economic development but also to keep forests healthy, and you also talked about how tribes are better at managing timberland than the Federal Government. I had a classmate in forestry school who was the president of the Intertribal Timber Council, and he has testified before this committee before. I would say that the data that I have seen from him, as well as other data, strongly supports what you said about tribes being better timberland managers.

In my home state of Arkansas, we have a lot of forests there, and in my district it is about 86 percent forested. We have a problem in Arkansas, the fact that we are growing so many trees. If you take everything that is harvested, everything that dies or is destroyed by fire, and then look at what grows every year, there is about 15 to 16 million tons more of timber in my state right now than there was at this time last year. To put that in perspective, every minute our forests grow a new truckload of logs. So, there is a huge abundance of wood in my state, and I know that is true in many other places because we are seeing a lot of forest fires.

I think it is very safe to say that we are at a point right now where the forests need industry much more than the industry needs forests, because there is so much timber out there. When we talk about the benefits of a healthy forest, to keep those forests working and productive and to reduce insects, disease, infestation, and ultimately forest fires, we need a home for that biomass when we take it off of there.

Do you believe that forests are less healthy, and the environment is in turn less healthy and robust under the current administra-

tion's forest management policies than it would be under a tribal management policy?

Mr. FERGUSON. I do. I am going to lean on Cody for more of the technical answers on that. But from what I have seen growing up in the forestry industry and working as a forestry tech for our tribe, I have to agree with everything you said. It is apparent on our border with the Federal lands in the Northwest, the Colville and the Okanogan National Forests, that the overstocking and—I don't want to call it mismanagement—but the under-managing has created very bad health issues and fire hazards. If you were to come to our reservation, we could show you that.

Just north of our border, just as we have stated, the health of that forest is in decline. Ours is growing well.

Mr. DESAUTEL. A lot of the problems we face with Federal land managers is they seem to think that there is one treatment to fix forest management. Everybody who manages forests understands that that is not a static forest. There is always change. So, a forest management activity needs to continue over time. One forest health treatment does not fix that problem forever. In the tribe's management we look at 15-year re-entry cycles to make sure that we continually manage those acres. We are managing different acres on every entry. We have good diversity to supply all the ecological needs we have for water quality, fish habitat, wildlife habitat, cultural plants, those types of things, along with healthy forests that are resilient to fires.

What we saw last year, we burned in 2015 upwards of 250,000 acres on a 1.4 million-acre reservation, which is huge. But we also saw a lot of beneficial fire because of the management that we have done. We had good early species composition, trees that are very resilient to fire. We had stands that had very low stocking. We had opportunities to go in there to catch those fires, but we had a lack of fire-fighting suppression—

Mr. WESTERMAN. So, you were using good forest management to keep your forest healthy. But for your neighbor, a Federal forest that may not be managed as well, the insects, the disease, the fires, it does not recognize your boundaries.

You mentioned a great point about how forests are dynamic and constantly changing and need management.

Mr. Chairman, are we going to do a second round of questions, or should I finish up?

The CHAIRMAN. No, we will do more.

Mr. WESTERMAN. OK. I will come back again.

The CHAIRMAN. Why don't you both take a seat in front of the microphones? Thank you for sacrificing your chair.

Let me go to each of you, if I could. One of the things that we are talking about in our committee is the concept of consultation, which is in law but sometimes not necessarily used. Can I ask you your experience dealing with both BIA and BLM, the Department of the Interior, on how consultation is working? Is it being done? Is it effective? Could it be improved? Very quickly, and then I will go through some specifics.

So, Mr. Olguin, with the Southern Utes, has the Federal Government been effective in their consultation? Could it be improved?

Mr. OLGUIN. From my perspective, and I think speaking on behalf of the Southern Ute Tribe, there is always going to be room for improvement. Nothing is perfect. When we look at consultation, there are so many things that come into play, whether that is the NACRA, the NEETHA, the air quality, the clean water. There are so many environmental components that it really begs the question of are we doing enough to ensure tribes are consulted on matters that are significant and important, especially when it comes to areas of territory and historical use as far as sites and area.

The Southern Ute, as an example, covering the western third of the state of Colorado, that is a lot of country to cover from the standpoint of consultation, with a lot of sites that are significant to us as mountain people. But at the end of the day, some agencies do better than others. When it comes to the point of the tribes themselves, they also have to play a very significant role in this consultation. Receiving a notice or receiving a letter just does not meet the letter of consultation as far as the process. It is a dual-pronged approach where tribes have to be at the table as well to ensure they provide adequate and significant consultation back to the agencies.

The CHAIRMAN. Mr. Glenn, you have a different kind of situation up in Alaska than they have on the reservations. Just respond to that same thing about does consultation work.

Mr. GLENN. Once again you have saved me many words in my own answer. Consultation exists on the North Slope with the Federal Government, in my case most directly with the Bureau of Land Management and the Bureau of Ocean Energy Management. It does happen, and it does include Alaska's Native Village Corporations, and even some of the municipalities.

Where I find a weakness in the consultation is in several ways. At the same time that consultation is invoked, the agency seems to be apologizing for the fact that they are not doing a very good job at it. "Give us some time, we are practicing, this is all kind of new to us." It seems that their approach to consultation is, "This is what we are going to do, and we are here to tell you we are going to do it," rather than meeting with us upstream of the crystallization of their idea, whatever it is, and having us be informed as to how they got to that idea, having us affect it one way or another with our local knowledge, local expertise, and then being a true consultation.

So again, the letter that says we are making a meeting and this is a consultation where we have no effect on what they were going to do anyway, that sounds paternalistic and very ineffective.

The CHAIRMAN. We have to do something a little bit differently here.

Mr. Denetsosie, let me ask you a specific one. There is going to be a bending and flaring rule coming out here. Has the Navajo Nation been consulted by BLM on anything with that potential rule going forward?

Mr. DENETSOSIE. I have seen the tribal leader letters, and I know that the Navajo Nation had a committee member that attended those meetings. We did that.

The CHAIRMAN. I understand there are going to be consultation sessions with Interior, Justice, and Army that they have scheduled

in the next few months. Do you know if this is going to be a topic of that conversation?

Mr. DENETSOSIE. No, I don't.

The CHAIRMAN. I only have 45 seconds. Mr. Westerman, let me go back to you for questions. I have a few more for some of the other witnesses, as well.

Mr. WESTERMAN. Thank you, Mr. Chairman.

I want to go back to the woody biomass for a moment. We talked about how important keeping our forests healthy is and the science behind it. It is good for the environment, it is good for the economy, better air, better water, better wildlife habitat, to get more recreational opportunities. There is not a downside to having healthy forests, and that includes on the environmental side.

So, with that in mind, do you believe that the Federal Government is allocating enough resources to research and demonstration projects, like you mentioned, for woody biomass compared to other renewable fuels?

Mr. DESAUTEL. I think there is adequate research, but the research tends to point at the same thing. The woody biomass utilization is often a cost. It is not necessarily something that is economically viable by itself. If you mix it with other forest management activities, I think that is where you have an opportunity. You can use some of the revenue generated from commercial timber harvests to cover some of the costs of non-commercial harvests.

A lot of the national forests that we see up in Washington, at least, seem to trend toward non-commercial treatments, I think, just because they are less controversial. They think they can get those through the NEPA process because people understand them for fuel treatments, but a lot of times those treatments are non-commercial. They remove a small amount of biomass, and they are not necessarily effective for very long from what we see from fuel treatments in—

Mr. WESTERMAN. One of the drivers in that is the fact that the energy market is not very well developed around woody biomass. I went to the National Foundation around the research labs trying to see if they were doing any research on how to better capture and extract the energy that is in the woody biomass, and there was one project they took me to see at the Lawrence Livermore Lab in Berkeley where they are actually breaking the biomass down into simple sugars that can be digested into a whole spectrum of chemicals and fuels, which has great core economic backbone to it. It would make it cost effective to go out and harvest woody biomass if you had a developed market like that.

But it appears to me that we are not out getting enough resources to develop those markets. We are relying on old combustion technology to burn this and make steam and electricity. So, I think we need to push for more research and more demonstration projects.

Also, this Administration—and this baffles me because we know the environmental benefits of having healthy forests—they are very lethargic in recognizing the scientific natural process of photosynthesis and recognizing woody biomass is a carbon-neutral material, like most other developed countries have done.

Do you think this is in any way hindering the development of woody biomass as a fuel?

Mr. DESAUTEL. Yes, I would agree with that. We have looked at what the traditional methods are economically, but there would be other markets, and the investment costs of this is I think the biggest driver. We have looked at a biomass facility because we harvest a lot of wood annually, about 77 million board feet a year, which produces a lot of ton wood and residues, but it is about \$100 million per facility, up to \$120 million per facility, and we don't know how many megawatts it will produce. But again, that is a huge investment, and you need long-term guarantees on supply to make that kind of investment. I think that is why this 20-year commitment for a stewardship contract is a huge part of what would ultimately bring in an outside investor to build that type of facility.

Mr. WESTERMAN. That is right. We have seen a lot of wood facilities close down, particularly in the West. If you try to get investors to come in and utilize this biomass, they are just not going to invest that kind of money if there is not some assurance that they can have a forest for their facility or the life cycle of the facility. That is definitely another issue I think we need to work on federally, on Federal forests, to make sure that we have a large landscape-wide stewardship contract.

Mr. Chairman, I will yield back, and I promise to have a question about something other than woody biomass next time.

The CHAIRMAN. That is OK. You can keep doing the forestry side. That is your forte.

I am going to go back to consultation because that is something on which I am still unsure. Let me ask Mr. Olguin and Mr. Glenn again, you both talked about H.R. 538. The White House issued a statement of administration policy opposing that bill, in part because it removes oversight for appraisal of Indian lands or trust assets.

You described how the Interior Department appraisal process has been problematic, at best. I guess the question I have is, before that administrative policy was actually set—Mr. Glenn, let me ask you—did anyone in the Administration talk to you before they came up with that policy? The same thing for Mr. Olguin. Did anyone talk to someone in your tribe before they actually came up with their policy statement?

Mr. GLENN. No.

The CHAIRMAN. OK. That is easy enough.

Mr. OLGUIN. I don't recall off the top of my head. I don't think so. Of course, for us, we do our own appraisals.

The CHAIRMAN. That becomes troubling as well.

Let me go to the Navajo Oil and Gas Company. APD stands for what again, Mr. Denetsosie?

Mr. DENETSOSIE. Application for Permit to Drill.

The CHAIRMAN. As you were talking about that, I cannot look at this in any other way than actually something more than just a tax on the resources of the Navajo land. Am I looking at this unfairly? It is not really a user fee. It is actually a tax just to generate money for the Federal Government?

Mr. DENETSOSIE. Well, I know that BLM does very minimal work on the Application for Permit to Drill on Navajo, and the project preview office does all the studies for that.

The CHAIRMAN. So, your nation is actually doing the effort there?

Mr. DENETSOSIE. Right, all of it.

The CHAIRMAN. And they get the money.

Mr. DENETSOSIE. So, I see it as a tax, too.

The CHAIRMAN. Mr. Henson, let me ask you a question once again. You talked about how different areas are treated differently. I think one of the issues, when you were talking about how it is about 45 days for permitting that you all can do versus what the state can do, the 4 to 6 years the BIA is coming up with the permitting, and it is common in some areas, it is not common in other areas. Some areas are faster than others. Is this simply based on the incompetence of the Federal Government, that when you are so far away from the area that you simply had too much land to manage and it is not going to be done efficiently or effectively? Or is this a by-product of staffing decisions? Is the delay because of staffing, or is it both of them?

Mr. HENSON. I think it is probably several things. One is just kind of aligning the incentives track. If you work in private industry and you have a deadline, you work very hard to meet it. If you have little incentive and little potential upside from getting through a large backlog in a quick and rapid manner, then you just do not have any incentive to do so.

So, I think some of it is incentives, the dislocation of potential upside from development happening from those who have the decisionmaking authority. I have heard quite a lot just in the last few months from different tribes out West about how hard it is to attract the right kind of staff, which in a low price environment for oil and gas it might be the best time in which you could potentially hire people. Denver, Houston, New Orleans—there are plenty of folks walking around looking for jobs these days that have the right kind of expertise. But the Federal H.R. apparatus is not necessarily set up to identify those folks, convince them to move to somewhere like Durango, Colorado, take up a new job working for the Feds, even though their skills would be the right set of skills.

You have kind of a mismatch in H.R. policies, a mismatch in the skills available, and funding issues. The BIA is under-funded in plenty of different ways. The allocation of the risk and reward, I think, is the critical thing from the economics perspective, because you do not have an incentive to work really hard to get that backlog solved when you work for the Federal Government far, far away.

The CHAIRMAN. Mr. Olguin, you were talking to me about staffing situations you have there. As long as BIA has to provide that, there is a problem. But I am assuming the tribe could actually do that work. You are already there. You are effective. You could handle that one.

Mr. OLGUIN. Yes. In fact, we do a majority of the work for the Bureau of Indian Affairs as staff, and it is really that concept of what do we have to do to help you help us. That is a model we have been using for quite a few years. Along that line, what it really entails is because the agency has struggled with finding

competent people, qualified people, people who understand the responsibilities when it comes to realty work, because there is no training program out there in tribal energy development when it comes to paperwork, we are seeing some very good opportunity with the San Juan College School of Energy where they are developing this curriculum right now. It is a long time coming, but when the tribe has to step in and do the work—and in our case it is very fortunate that we have hired good people, competent people, and pay them well, because an issue that does come into play is that the Federal system is underpaid.

When you look at competition, they are looking for competitive jobs in the Durango area. Of course, the cost of living is very high there. When the Bureau does advertise positions, people do show interest. When they get to the point of actually accepting the job, all of a sudden they find out the cost of living is too high, they cannot afford to move there, so they decline the position. It is a recurring cycle.

We have also experienced situations where not every region handles realty functions the same. Each region is different. What people learn through on-the-job training is different. Some folks do get transferred or get assigned to different regions. They bring that skill set with them, but it may not fit with the region where they end up working. So, the conflicts do create themselves in that respect as well.

The CHAIRMAN. Thank you.

Let me change the rules here. I have two more questions. Let me just throw them out, and then you can finish off the questioning.

Mr. WESTERMAN. All right.

The CHAIRMAN. For as long as you need to.

Look, I appreciate what you are doing. Obviously, consultation was one of the issues that I would like to see done differently. Obviously, the process that we go through I would like to see done smoothly, faster, differently. You are talking here about how a devolution of these decisions probably is the only way you can do it, because Indian Country is not monolithic. There are differences in every one of those.

I have two other specific issues to go into, if I could.

Mr. Glenn, there are Members of the House, even some members of our committee, who have co-sponsored efforts to try to make the Slope, the coastal areas and ANWR a wilderness area or a national monument. They don't ever talk to you guys about that? And does your area support any of that kind of approach?

Mr. GLENN. In general, we oppose setting aside huge swaths of land for any reason because even with the best of intentions, it ends up unfairly limiting our people, the residents, for any purpose into the future in some unanticipated way. We set aside a huge corner of our ocean for a bird called the spectacled eider who hardly nests there in comparison to where it nests elsewhere. So, we cannot develop any of our land that directly abuts that coastline. We cannot access the coastline by any kind of marine transportation because we are in critical habitat, nesting birds.

Wilderness issues are difficult for us. They present subsistence access problems in the name of protecting the environment. Our own people cannot hunt on top of the tundra for caribou in

summertime. We have become more like wards of an agency rather than citizens of our own land. So, we generally oppose wilderness and national monuments, and we oppose the unnecessarily excessive critical habitat designations. We are the ones who depend on the animals more than anyone else, and we know what would or would not jeopardize their condition. In the name of protecting them, the critical habitat designations do not improve their living environment one iota, and yet they reduce our ability to access our own land.

So, the short answer, again, is no.

The CHAIRMAN. One of my passions back in Congress is the concept of federalism. I do think that is the solution to our country's problems. But it also applies here with Indian Country as well, even though the concepts are not necessarily always talked about in the same sentence. But the idea of federalism, it is not liberal, it is not conservative policy. It is not either small government or big government. It is simply giving people the choices of having what they want in their particular area without impacting someone else.

So, if there is a state that wants a robust government, fine, let them do it, just so it does not impact my state. We get to make decisions for ourselves. It seems like we are saying basically the same thing with a lot of these areas in Indian Country. If we can actually allow you to make those decisions for yourselves according to your circumstances, those will be better decisions, those will be wiser decisions, those will be more effective decisions simply because people want it.

Sometimes when we talk about federalism, people's eyes glaze over. They don't really understand the term. It is that essay they did not write when they were a junior in high school. But what it actually means to me is, as I told a group of 20-something bloggers once, I said federalism is like an app for government, and all of a sudden they got excited and their fingers started dancing on the computer. I still don't know what I told them.

But it seems that the more you can actually give those decisions, devolve that decision down, especially when we have reservations, Indian Country, that already is a sovereign, the more we can do that, the better off we would be, and we simply are not moving in that direction.

I just want to ask one other question, Mr. Ferguson. You talked about forest lands that are under-managed, which I think is probably a good term to use in Washington State. It impacts Idaho, Montana, wherever the Forest Service is dominant. As I am looking at that, there are two factors that I look at with the Forest Service which makes it difficult for them to manage their land.

The first one deals with the cost of fighting wildfires, which is ever-growing. The second biggest cost the Forest Service has is the litigation. I guess one of the questions I have is why is that litigation issue not as big in Indian Country as it is on Federal forest land, and is there not something we could do to try to mitigate that litigation?

I think in every bill we have had, we have tried to deal with the concepts of litigation. If we cannot bring the litigation threat into

check, I don't know how we can ever provide enough money for actually not under-managing the forest lands.

Do you want to address that, and do you feel comfortable doing that?

Mr. FERGUSON. I think I would feel more comfortable with Cody. He has dealt with more of this than I have. Just to let the committee know, I was last minute asked to come.

The CHAIRMAN. We appreciate you coming regardless of when you were asked.

Mr. DESAUTEL. Mr. Chairman, the biggest difference in NEPA for us, and I think what helps us get through the process faster, is our scope of public is limited to the tribal membership. While we hear a lot of the same concerns we hear from other special interest groups, those groups are just smaller. The BIA requires if you are going to appeal a project, that you have to put up a cash bond and you have to show a vested interest in the project, which I think is very critical. A lot of times what you see in Federal projects is some college student from New Hampshire opposes the project just because they are environmentally friendly and don't understand what the benefits of the project are. So, I think that is the biggest difference between them, is the scope of who the public is and the requirements of what you have to do if you want to oppose a project.

The CHAIRMAN. Thank you for adding that, which I think is good because, Mr. Westerman, that was part of your bill, wasn't it?

Mr. WESTERMAN. It was.

The CHAIRMAN. OK. I will let you have the last round of questions.

Mr. WESTERMAN. Thank you again, Mr. Chairman.

We addressed issues earlier where the Federal Government or this Administration has greatly under-performed. Where I am from, we say actions speak louder than words. The words I hear from this Administration is it is all about protecting the environment. We have to keep this for future generations. But the actions on the ground are not part of protecting the environment or helping out future generations, or helping current generations get out of poverty.

Mr. Chairman, I think this goes along with what we were just talking about. You referenced the Administration's opposition to H.R. 538 earlier. I would just like to quote what the Administration said, why they oppose H.R. 538. They said, "It would undermine the public participation and transparency of review of projects on Indian lands under the National Environmental Policy Act, set unrealistic deadlines, remove oversight for appraisals of Indian lands for trust assets, prohibit awards under the Equal Access to Justice Act, or payment of fees or expenses to a plaintiff from the judgment fund and energy-related actions."

When they say it would prohibit awards under the Equal Access to Justice Act, I am not sure if everybody understands what that means, that the Federal Government will pay you to sue the Federal Government. The Administration, I think it is more about protecting special interests than protecting the environment and preserving it for future generations.

So, as we transition from their under-performance more to their over-reach, we see that a lot of these regulations, particularly with

the tribes, are duplicative. There are already regulations and rules in place to address the issues that the Federal Government is coming in and trying to put layers on top of layers.

I just want to open it up to the panel to maybe talk about some of the specific duplicative regulations and how they directly impact what you are trying to do on the tribal lands from a cost standpoint and a development standpoint. Does anybody want to jump on that first?

Mr. GLENN. I have a couple of examples. Thank you.

I think that no one has done more in recent times to elevate the visibility of tribes than this Administration at the very top. But at the same time, at the administrative levels, we have encountered so many instances where issues of duplicative safeguarding or duplicative actions in the name of safeguarding start to take multiple bites at the apple, overly excessive, to the detriment, like you said, of the people who are living there and not really helping the stated goal of safeguarding the environment for future generations. So, there is a disconnect there.

One example is mitigation, wetlands mitigation or mitigation in general, which says if you disturb an acre of environment over here with a project, you should preserve an acre of environment over there, somewhere else, some similar landscape classification system. Sometimes they use a multiplier; if you disturb 1 acre, you have to save 3, or 5, or 10 acres, depending on the classification of the landscape, which sounds like a pretty good system if you somehow have an ability to weigh in on what should be the exchange rate.

But my problem with the overall concept of mitigation is you have multiple agencies looking for mitigation for the same project. So, you will have Wetlands mitigation, Corps mitigation, NEPA mitigation, Fish and Wildlife Service mitigation, overall BLM mitigation. Now each one of their agencies are taking their pound of flesh from the same project, and the project can only tolerate so much. It has its own checks and balances. One of them includes whether or not it is financially viable. If you start to overly burden a project with mitigation, even with the best of intentions, then away goes the project, and now you have people who are hurting for more industry. They are in more poverty. They are in need of more Federal programs. So, on a big, global scale, good intentions end up with bad results, and mitigation is just one example.

Mr. WESTERMAN. I would like to say, in the forestry sector, we are loving the trees to death and not doing what we need to help them.

Mr. HENSON. I have one thing on what the layers of overlap are and what the impacts are. I think you were trying to address this here, but it kind of gets lost a little bit in the shuffle, and that is how incredibly important energy projects are for certain tribes.

I think for the Crow, two-thirds of the tribal budget is not directly from Federal dollars. It comes from the single production line they have in the mine. We heard some factoids about how, for the Jicarilla Apache, 90 percent of their tribal budget is oil and gas production. Today, we heard for the Southern Ute, 30 percent of the tribal budget is on-reservation oil production and gas production. For the Navajo, 90 percent of the workforce is Native.

One thing that happens when you stymie the next development is you prevent the hiring of that next 90 percent of Native workers. In lots of places where the unemployment rate is really high, sometimes the best jobs available in terms of skill set, pay, employment security, really do depend on these types of projects. So, to the extent you can help bring tribes into their next energy development project, you are really talking about real people, real jobs, living wages, important impacts on the individual tribal citizens that I think kind of gets overlooked a bit.

And the second layer of that is one of the great things about a lot of the revenues that these things generate, because they tend to go into the tribal general funds, is they allow things like we heard mentioned by Mr. Glenn, diversification into a wide array of industries, sectors, and diversification of energy development. Not all your development is in Alaska and small towns. You are able to really diversify your portfolio of investments and secure long-term revenues, long-term job security, and long-term educational opportunities for a wide range of people. A lot of that does not depend on the next mine shaft at Navajo, but on your ability to use those revenues very broadly.

So, I encourage you to keep that in mind as you continue to work on these kinds of bills.

Mr. WESTERMAN. I appreciate that insight, Mr. Henson. You hit directly on the point that what seems like a good idea from a building in Washington, DC, has real impact out on the ground across the country and affects real people's lives. The duplicativeness of mitigation and all the other ways that projects get loaded up with regulations ultimately kill these projects. Without them, we are not going to see economic development the way we would like to.

Mr. GLENN. May I expand on Mr. Henson's point with an example, a real-world example from the North? Which is that he is correct that there are a lot of unseen ripple effects of the presence or absence of industry in the region. In our case, the industry is the oil and gas industry. Yet, if you look at the largest employers of people in our region, it is the home rule government, the North Slope Borough, and the North Slope Borough School District. Yet, 100 percent, or 99.9 percent, of the tax base for the operational and capital budgets of those governments is the presence of industry in the region. So, even our schools are being built because of the presence of industry in our region, and our safe water, our electricity, our runways, our roads, and our health clinics are funded because we have a tax base which in our case is the oil and gas industry. It is doubly so for our region, for the Native corporations and for the local government. Thank you.

Mr. WESTERMAN. Cody?

Mr. DESAUTEL. If I could just add a little bit, I don't think it is just the regulations that are the issue, but sometimes we get policy. For example, the Secretary will order 3336 about sage grouse. We have seen a lot of issues that will affect Indian Country, especially as we move toward—well, hopefully we don't move toward it, but as we move toward this risk-based management funding allocation. That is a Secretarial Order from the Secretary of the Interior that will have detrimental impacts to all tribes in the West,

because it will shuffle funding and resources to those areas that are critical sage grouse habitat.

I understand that is more an oil and gas issue, but we should deal with oil and gas issues if that is the case and not try to hide that behind sage grouse habitat.

Mr. WESTERMAN. I would argue that that is regulation because that is not a bill that we debated, or that I, or Rob, or anybody in the U.S. Senate voted on. That is an unelected bureaucrat writing policy, which is what a regulation is.

With that, I will yield back, Mr. Chairman.

The CHAIRMAN. I had never heard of sage grouse before in my life. Thank you for saying that, especially because I think there will be some announcements either today or tomorrow to deal with that specific issue, so I thank you.

I thank everyone for being here. You were right in saying for me this is a significant issue because I come from one of the two states that allows no gaming, whatsoever. For my Native Americans within the state of Utah, this is an essential issue if there is going to be economic development on their reservation land.

I want to thank the New Mexico legislature for working with us and allowing us to use their facilities.

I want to thank the law enforcement here for your calm professionalism and the kindness with which you handled these things. Somebody went to a lot of effort to make signs, and I didn't even get a chance to see them.

[Laughter.]

The CHAIRMAN. Maybe when you show me back the video, because I think one mentioned me. Can I actually get that later on to put in the office? Never mind. Forget it.

[Laughter.]

The CHAIRMAN. To the five gentlemen, or six, who came and testified today, thank you so much for traveling here to do that. I would let you know that members of the committee may have other questions. That means Westerman and I. You may be bored tonight and come up with something else. I don't really think you are going to be worried about that, but our Committee Rules do say that if we do have questions, we may send those to you, and we would appreciate a timely response to them.

The committee hearing under Rule 4(h), the record for the committee will be open for 10 business days for those responses, if there are any, and for anything else you would like to add to the record at the same time.

And I appreciate the audience being here, as well as the staff for setting this up and doing everything so professionally. I thank you for your presence.

I think this has been a very good hearing, at least for me. I have some new insights and some things I really want to move forward on as we go into the future.

If there is no other business, the committee will stand adjourned. Thank you.

[Whereupon, at 11:30 a.m., the committee was adjourned.]